2020

CUMULATIVE SUPPLEMENT

TO

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1972 ANNOTATED

Issued December 2020

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2019 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

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CHAPTER 55.
GASOLINE AND MOTOR FUEL TAXES

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ARTICLE 1.
GASOLINE TAX.

Sec.

27-55-7.	Application for permit; bond.
27-55-13.	Monthly report and remittances.

§ 27-55-7. Application for permit; bond.

Before any person shall engage in business as a distributor of gasoline in this state, he shall first make application to the department, upon forms prescribed by the department, for a permit to engage in said business.

If said application is approved by the department, the applicant shall enter into a good and sufficient surety bond, written by a company qualified to

write such bonds in this state. The bond shall be made payable to the State of Mississippi in a sum of not less than One Thousand Dollars ($1,000.00) nor more than Two Hundred Fifty Thousand Dollars ($250,000.00), the amount to be determined by the department; or, in lieu thereof, the applicant may deposit with the department a cash bond in the amount so determined. A personal bond in the amount so determined shall also be acceptable in lieu of a surety bond if the same is adequately secured by the pledge or assignment of a pledgeable or assignable bond or bonds of the State of Mississippi or the United States government. Such bond or bonds shall be in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and not to exceed the gasoline tax estimated to become due by the said distributor of gasoline for any ninety-day period. If the distributor of gasoline is greater than one (1) month delinquent, and the gasoline tax estimate for any ninety-day period exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), then the bond amount shall be increased in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to equal the gasoline tax estimate for any ninety-day period. If the distributor of gasoline is greater than three (3) months delinquent, and the gasoline tax estimate for any one-hundred-eighty-day period exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), then the bond amount shall be increased in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to equal the gasoline tax estimated for any one-hundred-eighty-day period. The bond herein required shall be increased within the limits hereinabove set forth from time to time if deemed insufficient by the department, giving to the distributor of gasoline fifteen (15) days' notice, in writing, to increase said bond, said notice to state the amount of increase demanded.

The condition of said bond shall be that the distributor of gasoline shall fully comply with all laws pertaining to distributors of gasoline and pertaining to the transportation of gasoline as regulated by this article, and that he shall pay the gasoline tax and the penalties provided. Provided, however, any person who, prior to January 1, 1970, has furnished bond to meet the requirements of any petroleum tax law administered by the department, shall not be required to furnish an additional bond provided his existing bond is adequate, but such person shall be subject to all the other provisions of this article regulating and governing distributors of gasoline.

Provided further, that any person who purchases all of his gasoline on a tax-paid basis and from a qualified bonded distributor of gasoline for sale or distribution to retailers for resale to consumers shall not be required to make bond for said gasoline purchased, but shall be subject to all the other provisions of this article regulating and governing distributors of gasoline.

HISTORY: Codes, 1942, § 10076-03; Laws, 1969 Ex Sess, ch. 58, § 3; Laws, 1981, ch. 468, § 2, eff from and after July 1, 1981; Laws, 2020, ch. 323, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the second paragraph, added the fifth and sixth sentences.

§ 27-55-13. Monthly report and remittances.

For the purpose of determining the amount of his liability for the tax imposed by this article, each bonded distributor of gasoline shall, not later than the twentieth day of the month next following the month in which this article becomes effective, and not later than the twentieth day of each month thereafter, file with the department a monthly report which shall include a statement of the number of gallons of gasoline or blend stock received by such distributor within this state during the preceding calendar month, and such other information as may be reasonably necessary for the proper administration of this article.

At the time of filing each monthly report with the department, a distributor may take a credit for the number of gallons of gasoline that he purchased during the preceding calendar month from a distributor who pays the excise tax imposed by this article on such gasoline.

At the time of filing each monthly report with the department, each distributor of gasoline shall pay to the department the full amount of the gasoline tax due from such distributor for the preceding calendar month, less two percent (2%) to cover evaporation, shrinkage and other normal losses.

Reports and payments must be filed electronically by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be filed electronically by the first working day following the due date in order to be considered timely filed.

The monthly report of the distributor of gasoline shall be prepared and filed with the department on forms prescribed by the department, or the distributor of gasoline may, with the approval of the department, furnish the required information on machine-prepared schedules. Such monthly reports or schedules shall be signed by the distributor or his duly authorized agent and shall contain a declaration that the statements contained therein are true and correct and are made under the penalty of perjury.

HISTORY: Codes, 1942, § 10076-06; Laws, 1969 Ex Sess, ch. 58, § 6; Laws, 1981, ch. 468, § 4; Laws, 1991, ch. 384, § 3; Laws, 1996, ch. 306, § 1; Laws, 1998, ch. 457, § 2, eff from and after passage (approved March 23, 1998); Laws, 2020, ch. 323, § 9, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the fourth paragraph, deleted "sent to the commission by mail" following "Reports and payments," and substituted "filed electronically" for "postmarked" both times it appears.

ARTICLE 7.

SPECIAL FUEL TAX.

Sec.

27-55-507. Distributor permit; application; bond.
27-55-523. Monthly report and remittance.

§ 27-55-507. Distributor permit; application; bond.

Before any person shall engage in business as a distributor of special fuel in this state, he shall first make application to the department, upon forms prescribed by the department, for a permit to engage in said business.

If the application is approved by the department, the applicant shall enter into a good and sufficient surety bond, written by a company qualified to write such bonds in this state. The bond shall be made payable to the State of Mississippi in a sum not less than One Thousand Dollars ($1,000.00) nor more than Two Hundred Fifty Thousand Dollars ($250,000.00), the amount to be determined by the department; or, in lieu thereof, the applicant may deposit with the department a cash bond in the amount so determined. A personal bond in the amount so determined shall also be acceptable in lieu of a surety bond if the same is adequately secured by the pledge or assignment of a pledgeable or assignable bond, or bonds, of the State of Mississippi or the United States government. Such bond or bonds shall be in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and not to exceed the special fuel taxes estimated to become due by the distributor of special fuel for any ninety-day period. If the distributor of special fuel is greater than one (1) month delinquent, and the special fuel tax estimate for any ninety-day period exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), then the bond amount shall be increased in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to equal the special fuel tax estimate for any ninety-day period. If the distributor of special fuel is greater than three (3) months delinquent, and the special fuel tax estimate for any one-hundred-eighty-day period exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), then the bond amount shall be increased in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to equal the special fuel tax estimated for any one-hundred-eighty-day period. The bond required by this section shall be increased within the limits hereinabove set forth from time to time if deemed insufficient by the department, giving to the distributor of special fuel fifteen (15) days' notice, in writing, to increase such bond, such notice to state the amount of increase demanded.

The condition of such bond shall be that the distributor of special fuel shall fully comply with all laws pertaining to distributors of special fuel and pertaining to the transportation of special fuel as regulated by this article, and that he shall pay the special fuel taxes, and the penalties provided.

HISTORY: Laws, 1999, ch. 461, § 4, eff from and after July 1, 1999; Laws, 2020, ch. 323, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the second paragraph, added the fifth and sixth sentences.

§ 27-55-523. Monthly report and remittance.

For the purpose of determining the amount of his liability for the tax imposed by this article, each bonded distributor of special fuel shall, not later

than the twentieth day of the month next following the month in which this article becomes effective, and not later than the twentieth day of each month thereafter, file with the department a monthly report which shall include a statement of the number of gallons of special fuel received and sold by such distributor of special fuel within this state during the preceding calendar month, and such other information as may be reasonably necessary for the proper administration of this article.

At the time of filing each monthly report with the department, a distributor may take a credit for the number of gallons of special fuel that he purchased during the preceding calendar month from a distributor who pays the excise tax imposed by this article on such special fuel.

At the time of filing each monthly report with the department, each distributor of special fuel shall pay to the department the full amount of the special fuel tax due from such distributor for the preceding calendar month.

Reports and payments must be filed electronically by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be filed electronically by the first working day following the due date in order to be considered timely filed.

The monthly report of the distributor of special fuel shall be prepared and filed with the department on forms prescribed by the department, or the distributor of special fuel may, with the approval of the department, furnish the required information on machine-prepared schedules. Such monthly reports or schedules shall be signed by the distributor or his duly authorized agent and shall contain a declaration that the statements contained in such report are true and correct and are made under the penalty of perjury.

When special fuel, which would otherwise be taxable under the provisions of this article, is imported, sold, delivered or exported, under conditions which will exclude such special fuel from the tax levied under this article by reasons of one or more of the exemptions provided in this article, deduction for such exempt special fuel may be taken without prior approval of the department on the monthly report of the bonded distributor of special fuel importing, selling, delivering or exporting such special fuel. Provided, however, that the department may require proof to be furnished of such deduction for exempt special fuel.

When the Five and Three-fourths Cents (5.75¢) per gallon tax has accrued or has been paid on special fuel that is taxed at Eighteen Cents (18¢) per gallon, a deduction of Five and Three-fourths Cents (5.75¢) per gallon may be made.

HISTORY: Laws, 1999, ch. 461, § 12, eff from and after July 1, 1999; Laws, 2020, ch. 323, § 10, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the fourth paragraph, deleted "sent to the commission by mail" following "Reports and payments," and substituted "filed electronically" for "postmarked" both times it appears.

CHAPTER 57.

TAX ON OILS

Article 1. Lubricating Oil. 27-57-1

ARTICLE 1.

LUBRICATING OIL.

Sec.
27-57-5. Definitions.
27-57-7. Distributor; application for permit; bond.
27-57-9. Distributor; revocation of permit; injunction.
27-57-11. Excise tax on lubricating oil.
27-57-13. Monthly report and remittance.
27-57-17. Lubricating oil tax; exemptions.

§ 27-57-5. Definitions.

The words, terms and phrases as used in this article shall have the following meanings unless the context requires otherwise:

(a) "Lubricating oil" means all petroleum-based oils or synthetic lubricants intended for use in the crankcase of an internal combustion engine, either spark ignition or diesel type. The purpose of "lubricating oil" is to reduce friction between two (2) solid surfaces moving relative to one another. Lubricating oil shall not mean spindle oils, cutting oils, steam cylinder oils, transmission fluids or oils, gear oils, industrial oils, electrical insulating oils, manufactured, recommended, advertised and intended for such; lubricating oil specifically designed for use in large stationary engines of five hundred (500) horsepower or more; oils specifically designed for use in aircraft or outboard motors, or lubricating oil additives and compounds, manufactured, recommended, advertised and intended for use as an additive or compound and packaged in quantities of one (1) gallon or less; oils which would cause damage to an internal combustion engine if used as a lubricant, or special purpose oils where the finished cost would make its use as a lubricating oil in an internal combustion engine economically prohibitive, or oils used as raw materials in manufacturing processes and any grease which is classified as a lubricant and which is manufactured, recommended, advertised and intended for use as such.

(b) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(c) "Distributor" means any person who acquires lubricating oil on which the tax levied by this article has not been paid and sells or delivers lubricating oil to wholesalers, retailers or directly to consumers.

(d) "Commission" or "department" means the Department of Revenue.

(e) "Refiner" or "processor" shall mean every person who shall receive, produce, manufacture, refine, distill, blend or compound lubricating oil in this state, when such person shall engage in refining or processing petroleum products in this state, and the blending or mixing process produces a finished product with different physical and chemical properties from the original products.

(f) "Waters" shall mean public waters.

(g) "Retailer" means every person who sells lubricating oil at retail.

HISTORY: Codes, 1942, § 10078-02; Laws, 1969 Ex Sess, ch. 56, § 2; Laws, 1972, ch. 479, § 1; Laws, 1978, ch. 358, § 1; Laws, 1982, ch. 438, § 5; Laws, 2009, ch. 492, § 94, eff from and after July 1, 2010; Laws, 2020, ch. 323, § 5, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment deleted "Class A" preceding "Distributor" in (c).

§ 27-57-7. Distributor; application for permit; bond.

Before any person shall engage in business as a Class A distributor of lubricating oil, as defined in this article, in this state he shall first make application to the department, upon forms prescribed by the department, for a permit to engage in said business.

If said application is approved, the department may require said applicant to enter into a good and sufficient surety bond, written by a company qualified to write such bonds in the State of Mississippi, which bond shall be made payable to the State of Mississippi in a sum not less than One Thousand Dollars ($1,000.00) nor more than Two Hundred Fifty Thousand Dollars ($250,000.00); or in lieu thereof, deposit with the department a cash bond in the aforesaid amount. A personal bond in the aforesaid amount shall also be acceptable if the same is secured by bonds of the State of Mississippi or the United States government. Such bond or bonds shall be in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and not to exceed the lubricating oil tax estimated to become due by the said distributor for any ninety-day period. If the distributor of lubricating oil is greater than one (1) month delinquent, and the lubricating oil tax estimate for any ninety-day period exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), then the bond amount shall be increased in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to equal the lubricating oil tax estimate for any ninety-day period. If the distributor of lubricating oil is greater than three (3) months delinquent, and the lubricating oil tax estimate for any one-hundred-eighty-day period exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), then the bond amount shall be increased in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to equal the lubricating oil tax estimated for any one-hundred-eighty-day period. The bond herein required shall be increased within the limits hereinbefore set forth from time to time if deemed insufficient by the department giving to the licensee fifteen (15) days' notice, in writing, to increase said bond, said notice to state the amount of increase demanded.

The bond required by this section shall be conditioned that the distributor will fully comply with all laws pertaining to distributors of lubricating oil and pay all excise taxes and penalties provided. Provided that bonds given by distributors under the laws heretofore in force shall remain in full force and effect. Provided, however, any person who has already furnished bond under a prior petroleum tax law or shall furnish a bond to meet the requirements of any petroleum tax law administered by the department shall not be required to furnish an additional bond, but said person shall be subject to all other conditions, requirements and liabilities imposed herein upon a distributor of lubricating oil.

HISTORY: Codes, 1942, § 10078-03; Laws, 1969 Ex Sess, ch. 56, § 3; Laws, 1972, ch. 479, § 2; Laws, 1981, ch. 468, § 28; Laws, 1982, ch. 438, § 6, eff from and after July 1, 1982; Laws, 2020, ch. 323, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the second paragraph, added the fourth and fifth sentences.

§ 27-57-9. Distributor; revocation of permit; injunction.

If the department approves the application and bond, it shall issue a permit authorizing said applicant to engage in business as a distributor and said permit shall not be assignable or otherwise transferable. Said permits may be revoked for a single business location or all such locations by the department at any time upon ten (10) days' written notice, if said distributor shall fail to pay all excise taxes and penalties due within the time provided by law where so required, or shall fail in any way to comply with all the provisions of this article, but such cancellation shall not relieve the distributor or his sureties from liability on the distributor's bond. No permit shall be issued any applicant who is in arrears or default to the state or any subdivision thereof for any taxes on any petroleum products. Copies of all permits shall be filed and recorded alphabetically by the comptroller.

Any person engaging in the business of a distributor without a permit having first been obtained as provided herein, or after any permit granted a distributor has been revoked, shall forfeit all right to do business as a distributor of lubricating oil in the State of Mississippi for a period of not less than one (1) year, nor more than five (5) years. It shall be the duty of the department, when it shall have knowledge that any person is engaging in business as a distributor without a valid permit to proceed by injunction or otherwise, to prevent the continuance of said business as a distributor of lubricating oil, and any judge or chancellor now authorized to grant injunctions, shall grant an injunction enjoining the continuance of said business for not less than one (1) year nor more than five (5) years.

HISTORY: Codes, 1942, § 10078-04; Laws, 1969 Ex Sess, ch. 56, § 4; Laws, 1972, ch. 479, § 3; Laws, 1981, ch. 468, § 29, eff from and after July 1, 1981; Laws, 2020, ch. 323, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the first sentence of the first paragraph, substituted "engage in business as a distributor" for "engage in business as either a Class A or Class B distributor."

§ 27-57-11. Excise tax on lubricating oil.

Any person who is engaged in business as a Class A distributor or who acts as a distributor as defined in this article, shall pay for the privilege of engaging in such business or acting as such distributor, an excise tax of Two Cents (2¢) per quart (Eight Cents (8¢) per gallon) upon lubricating oil (1) sold to distributors; (2) sold to retailers; (3) sold directly to a consumer; (4) used in any motor vehicle owned or operated by such person in this state. Provided that the tax herein imposed and assessed shall be collected and paid to the State of Mississippi but once in respect to any lubricating oil.

HISTORY: Codes, 1942, § 10078-05; Laws, 1969 Ex Sess, ch. 56, § 5; Laws, 1972, ch. 479, § 4, eff from and after July 1, 1972; Laws, 2020, ch. 323, § 7, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment deleted "Class A" following "who acts as a" and "or acting as such," and deleted "Class B" following "sold to"; and deleted the former second paragraph, which related to a requirement that individuals applying for a permit as a Class B distributor take an actual physical inventory of all lubricating oil on hand and to the payment of a tax that would immediately accrue upon such lubricating oil.

§ 27-57-13. Monthly report and remittance.

(1) For the purpose of determining the amount of his liability for the tax imposed herein, each distributor shall, not later than the twentieth day of the month next following the month in which this article becomes effective and not later than the twentieth day of each month thereafter, file with the department a monthly report which shall include a statement of the number of gallons of lubricating oil sold by such distributor within this state during the preceding calendar month and such other information as may be necessary for the proper administration of this article.

(2) At the time of filing each monthly report with the department, each distributor shall pay to the department the full amount of the lubricating oil tax due from such distributor for the preceding calendar month.

Reports and payments must be filed electronically by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be filed electronically by the first working day following the due date in order to be considered timely filed.

The monthly report of the distributor shall be prepared and filed with the department on forms prescribed by the department, or such distributor may, with the approval of the department, furnish the required information on machine-prepared schedules setting out such information as is prescribed on

the forms furnished by the department. Such monthly reports shall be signed by the distributor in person or by his duly authorized agent and shall contain a declaration that the statements contained therein are true and are made under penalty of perjury.

HISTORY: Codes, 1942, § 10078-06; Laws, 1969 Ex Sess, ch. 56, § 6; Laws, 1972, ch. 479, § 5; Laws, 1981, ch. 468, § 30; Laws, 1996, ch. 306, § 5, eff from and after July 1, 1996; Laws, 2020, ch. 323, § 13, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by deleting "Class A" preceding "distributor" the second time it appeared in the first sentence of the last paragraph. That reference was mistakenly left in the section although all of the other references to "Class A" throughout the rest of section were deleted by Section 13 of Chapter 323, Laws of 2020. The Joint Committee ratified the deletion at its October 19, 2020, meeting.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; deleted "Class A" preceding "distributor" everywhere it appears; and in the second paragraph, deleted "sent to the commission by mail" following "Reports and payments," and substituted "filed electronically" for "postmarked" both times it appears.

§ 27-57-17. Lubricating oil tax; exemptions.

(1) There shall not be included in the measure of the tax levied hereunder any lubricating oils:

(a) Sold or delivered by a distributor to another distributor within this state.

(b) Sold by a distributor to the United States government for use of the armed forces only and delivered in quantities of not less than fifty (50) gallons.

(c) Exported to a destination beyond the borders of this state by any person, by ship, vessel, barge, railroad tank car, pipeline, or tank truck, if such tank truck is operated by a common or contract carrier.

(d) Exported to destination beyond the borders of this state by a distributor.

(e) Sold in quantities of fifty (50) gallons, or more, to be used by any railroad locomotive, boat, vessel, ship, towboat, or dredgeboat.

(f) Brought into this state in the reservoir provided by the manufacturer of a vehicle as the container of oils used exclusively for lubricating said vehicle.

(2) Evidence of exempt transactions provided in this section and the subsections thereof shall consist of copies of invoices, documents or any other evidence that may be required by the department. In order to claim exemptions provided under this article, the distributor of lubricating oil must file claims therefor within three (3) years from the date of sale or delivery; otherwise, claims for such exemptions shall be disallowed.

HISTORY: Codes, 1942, § 10078-08; Laws, 1969 Ex Sess, ch. 56, § 8; Laws,

1972, ch. 479, § 7; Laws, 1989, ch. 518, § 5, eff from and after July 1, 1989; Laws, 2020, ch. 323, § 8, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1), deleted "Class A" preceding "distributor" twice in (a), once in (b), and once in (d); and substituted "department" for "commission" in (2).

CHAPTER 59.

LIQUEFIED COMPRESSED GAS TAX

Article 1. General Provisions. 27-59-1
Article 3. User Tax. 27-59-301

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
27-59-7. Distributor permit; application; bond.
27-59-13. Monthly report and remittance.

§ 27-59-7. Distributor permit; application; bond.

Before any person shall engage in business as a distributor of compressed gas, he shall first make application to the department, upon forms prescribed by the department, for a permit to engage in said business.

If said application is approved, the department may require said applicant to enter into a good and sufficient surety bond, written by a company qualified to write such bonds in the State of Mississippi, which bond shall be made payable to the State of Mississippi, in a sum not less than One Thousand Dollars ($1,000.00) nor more than Twenty-five Thousand Dollars ($25,000.00); or in lieu thereof, deposit with the department a cash bond in the aforesaid amount. A personal bond in the aforesaid amounts shall also be acceptable if the same is secured by the bonds of the State of Mississippi or the United States government. Such bond or bonds shall be in an amount not to exceed Twenty-five Thousand Dollars ($25,000.00), and not to exceed the compressed gas taxes estimated to become due by the said distributor for any ninety-day period. If the distributor of compressed gas is greater than one (1) month delinquent, and the compressed gas tax estimate for any ninety-day period exceeds Twenty-five Thousand Dollars ($25,000.00), then the bond amount shall be increased in excess of Twenty-five Thousand Dollars ($25,000.00) to equal the compressed gas tax estimate for any ninety-day period. If the distributor of compressed gas is greater than three (3) months delinquent, and the compressed gas tax estimate for any one-hundred-eighty-day period exceeds Twenty-five Thousand Dollars ($25,000.00), then the bond amount shall be increased in excess of Twenty-five Thousand Dollars ($25,000.00) to equal the compressed gas tax estimated for any one-hundred-eighty-day period. The bond herein required shall be increased within the limits herein-

before set forth from time to time if deemed insufficient by the department, giving to the distributor fifteen (15) days' notice, in writing, to increase said bond, said notice to state the amount of increase demanded.

Said bond shall be conditioned that the distributor will fully comply with all laws pertaining to distributors of compressed gas as regulated by this chapter and to pay the compressed gas taxes and penalties provided. Provided, however, that any person who has already furnished bond under a prior petroleum tax law or shall furnish a bond to meet the requirements of any petroleum tax law administered by the department shall not be required to furnish an additional bond, but said person shall be subject to all other conditions, requirements and liabilities imposed herein upon a distributor of compressed gas.

Before any public utility sells or delivers natural gas for use as a fuel in a motor vehicle to a user, as defined herein, the public utility shall notify, in writing, the department of its intention to engage in such activity.

A public utility who sells or delivers natural gas to a user, as defined herein, shall be subject to the same requirements and penalties as distributors of compressed gas except that the public utility shall not be required to comply with Section 75-57-49.

HISTORY: Codes, 1942, § 10079-04; Laws, 1969 Ex Sess, ch. 55, § 4; Laws, 1981, ch. 468, § 54; Laws, 1982, ch. 410, § 5, eff from and after July 1, 1982; Laws, 2020, ch. 323, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the second paragraph, added the fourth and fifth sentences.

§ 27-59-13. Monthly report and remittance.

The excise taxes levied in this chapter shall become due and payable on or before the twentieth day of the month succeeding the month in which the tax accrues. Each distributor shall file with the department a monthly report setting forth the quantity of compressed gas received within this state, less any authorized exemptions; the quantity of compressed gas sold for use on the highways of this state; and any other information as may be reasonably necessary for the administration of this chapter. The distributor shall remit to the department with the monthly report, the full amount of the excise tax shown thereon to be due.

Reports and payments must be filed electronically by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be filed electronically by the first working day following the due date in order to be considered timely filed.

An amount equal to One-fourth Cent (1/4¢) per gallon on all compressed gas shown to be taxable for highway use may be deducted; provided, that the One-fourth Cent (1/4¢) per gallon tax on such compressed gas has been paid or is covered by the bond of a distributor of compressed gas.

The monthly report of the distributor shall be prepared and filed with the department on forms prescribed by the department or the distributor may, with the approval of the department, furnish the required information on machine-prepared schedules. Such monthly reports shall be signed by the distributor or his duly authorized agent and contain a declaration that the statements contained therein are true and are made under the penalty of perjury.

All persons storing compressed gases, excepting natural gas, in underground caverns or cavities in this state shall make monthly reports of withdrawals of such compressed gases from storage, on forms prescribed by the department at the same time, in the same manner, and subject to the same terms, conditions and penalties as is otherwise provided for distributors of compressed gas. Sales and deliveries of compressed gases to nonpermitted distributors shall be listed and reported on such reports separately from sales and deliveries to permitted distributors.

HISTORY: Codes, 1942, § 10079-07; Laws, 1969 Ex Sess, ch. 55, § 7; Laws, 1981, ch. 468, § 57; Laws, 1982, ch. 410, § 9; Laws, 1996, ch. 306, § 10, eff July 1, 1996; Laws, 2020, ch. 323, § 11, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the fourth paragraph, deleted "sent to the commission by mail" following "Reports and payments," and substituted "filed electronically" for "postmarked" both times it appears.

ARTICLE 3.

USER TAX.

Sec.
27-59-311. Payment of tax; filing of reports.

§ 27-59-311. Payment of tax; filing of reports.

The tax levied in this article shall become due and payable on or before the twentieth day of the month succeeding the month in which the tax accrues. Each person liable for the tax levied in this article shall file with the department a monthly report setting forth the quantity of natural gas and/or locomotive fuel used in this state and any other information as may be deemed reasonably necessary for the administration of this article and shall remit the full amount of the taxes shown to be due.

Reports and payments must be electronically filed by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be electronically filed by the first working day following the due date in order to be considered timely filed.

The monthly report shall be prepared and filed with the department on forms prescribed by the department or with the approval of the department, on

machine-prepared schedules. Such monthly reports shall be signed by the permittee or his duly authorized agent and contain a declaration that the statements contained therein are true and are made under the penalty of perjury.

HISTORY: Laws, 1989, ch. 462, § 6; Laws, 1996, ch. 306, § 11, eff from and after July 1, 1996; Laws, 2020, ch. 323, § 12, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "department" for "commission" everywhere it appears; and in the fourth paragraph, deleted "sent to the commission by mail" following "Reports and payments," and substituted "filed electronically" for "postmarked" both times it appears.

CHAPTER 65.

SALES TAX

In General. 27-65-1
Tax on Sale of Motor Vehicle by Individual. 27-65-201
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IN GENERAL

Sec.
27-65-7. Definitions; "Retailer"; "Retail sales.".
27-65-9. Definitions; "Business"; "Doing business.".
27-65-17. Selling tangible personal property wholesale and retail.
27-65-22. Amusements.
27-65-27. Permit to engage in business.
27-65-33. Returns.
27-65-53. Refunds.
27-65-75. Distribution of sales taxes, contractor taxes, motor fuels taxes, and other revenue collected under this chapter.
27-65-101. Exemptions; industrial [Paragraph (1)(pp) repealed effective July 1, 2022].
27-65-107. Exemptions; utility.
27-65-111. Exemptions; others.

§ 27-65-1. Title of chapter.

Editor's Note — Laws of 2020, ch. 376, § 1, effective June 25, 2020, provides:

"SECTION 1. (1) There is hereby created the Sales Tax Taxation of Construction-Related Activities Study Committee to examine and develop recommendations regarding the taxation of certain construction-related activities in Mississippi.

"(2) The committee shall, at a minimum, study and report to the 2021 Regular Session of the Legislature the committee's recommendation for which construction-related businesses should be subject to sales taxation in Mississippi and the committee's recommendation as to the manner in which construction-related activities should be taxed in Mississippi. The committee shall provide the provisions of the current Mississippi law that will need to be amended to adopt the measures described in this section and any other measures recommended by the committee.

"(3) The committee shall be composed of the following members:

"(a) The Commissioner of the Mississippi Department of Revenue, or his/her

designee;

"(b) A member of the Mississippi State Senate appointed by the Lieutenant Governor;

"(c) A member of the Mississippi House of Representatives appointed by the Speaker of the House;

"(d) The Chairman of the Senate Finance Committee;

"(e) The Chairman of the House Ways and Means Committee;

"(f) The Executive Director of the Mississippi Associated General Contractors of Mississippi, or his/her designee;

"(g) The President of the Associated Builders and Contractors Mississippi, or his/her designee;

"(h) The President of the Homebuilders Association of Mississippi, or his/her designee;

"(i) The Executive Director of the Subcontractor and Supplier Alliance of Mississippi, or his/her designee;

"(j) The Executive Director of the Mississippi Chapter of the American Subcontractors Association, Inc., or his/her designee; and

"(k) An appointee of the Governor.

"(4) Appointments to the study committee shall be made within thirty (30) days of the effective date of this act. At the first meeting, the committee shall elect from among its membership a chairman, a vice chairman and any other officers determined to be necessary, and shall adopt rules for transacting business and keeping records.

"(5) A majority of the members of the study committee shall constitute a quorum. In the adoption of rules, resolutions and reports, and in the election of a chairman, vice chairman and any other officers determined to be necessary, an affirmative vote of a majority of the members present shall be required.

"(6) The Department of Revenue shall provide the staff and other support necessary for the study committee to perform its duties.

"(7) To effectuate the purposes of this act, any department, division, board, bureau, committee, institution or agency of the state, or any political subdivision thereof, shall, at the request of the chairman of the study committee, provide the facilities, assistance, information and data needed to enable the study committee to carry out its duties.

"(8) Upon its report to the 2021 Regular Session of the Legislature, the study committee shall be dissolved."

§ 27-65-7. Definitions; "Retailer"; "Retail sales."

"Retailer" shall apply to a person making retail sales through vending machines, by maintaining a store, or operating as a transient vendor, or renting or leasing tangible personal property. Retailer also includes persons who facilitate the sale of services or tangible personal property that belongs to a third party.

"Retail sales" shall mean and include all sales of tangible personal property except those defined herein as wholesale and those made to a wholesaler, jobber, manufacturer or custom processor for resale or for further processing.

"Retail sale" shall include the value of any tangible personal property manufactured or purchased at wholesale which is withdrawn from the business or stock in trade and is used or consumed within this state in the business or by the owner or by any other person, whether or not in the regular course of business or trade.

"Retail sale" shall also include a sale invoiced to a retailer but delivered to another person who pays for the merchandise upon taking possession.

"Retail sale" shall also include a sale made or facilitated by a person regularly engaged in the sale or facilitation of sales of services or tangible personal property. "Retail sale" does not include a sale by a third-party food delivery service that delivers food from an unrelated restaurant to a customer, regardless of whether the customer orders and pays for the food through the delivery service or whether the delivery service adds fees or upcharges to the price of the food.

HISTORY: Codes, 1942, § 10104-02; Laws, 1954, ch. 369, § 4; Laws, 1955, Ex Sess, ch. 109, § 4; Laws, 1958, ch. 574, § 3; Laws, 1964, ch. 530, § 2; Laws, 1982, 1st Ex Sess, ch. 17, § 34; brought forward, Laws, 1983, ch. 546, § 6; Laws, 2007, ch. 359, § 4, eff from and after July 1, 2007; Laws, 2020, ch. 425, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added the last sentence of the first paragraph; and added the last paragraph.

§ 27-65-9. Definitions; "Business"; "Doing business."

(1) "Business" shall mean and include all activities or acts engaged in (personal or corporate), for benefit or advantage, either direct or indirect, and not exempting subactivities in connection therewith. Each of such subactivities shall be considered business engaged in, taxable in the class in which it falls.

(2) "Business" shall include activities engaged in by exempt organizations or political entities in competition with privately owned business subject to the provisions of this chapter; however, the term "business" shall not include the following activities:

(a) Sales of prepaid student meal plans by public or private universities, colleges and community or junior colleges;

(b) Sales of prepared meals by any public or private school to students in kindergarten through Grade 12; and

(c) Retail sales of prepared meals when:

(i) Sold on the campus of a public or private university, college or community or junior college in this state to a student enrolled at such university, college or community or junior college; and

(ii) Payment for the sale is made through the use of a prepaid declining balance account or similar instrument or account issued to such student by the university, college or community or junior college that may be used only to purchase prepared meals.

(3) "Business" shall include the activity or activities of a person in this state performing a service under contract or agreement with another person when the service performed is taxable under the provisions of this chapter.

(4) "Doing business" shall include any person owning personal property located in this state under lease or rental agreement or any person installing personal property within this state.

(5) "Doing business" shall include any person represented in this state by salesmen taking or soliciting orders to be filled from points outside this state for subsequent delivery of the merchandise in equipment owned or leased by the seller to customers located in this state.

(6) "Doing business" shall include any person selling or facilitating the sale of services or tangible personal property.

HISTORY: Codes, 1942, § 10104-03; Laws, 1954, ch. 369, § 5; Laws, 1955, Ex Sess, ch. 109, § 5; Laws, 1958, ch. 574, § 4; Laws, 2006, ch. 464, § 1; Laws, 2007, ch. 359, § 3; Laws, 2009, ch. 479, § 1, eff from and after passage (approved Mar. 31, 2009); Laws, 2020, ch. 425, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (6).

§ 27-65-17. Selling tangible personal property wholesale and retail.

(1)(a) Except as otherwise provided in this section, upon every person engaging or continuing within this state in the business of selling any tangible personal property whatsoever there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross proceeds of the retail sales of the business.

(b) Retail sales of farm tractors and parts and labor used to maintain and/or repair such tractors shall be taxed at the rate of one and one-half percent (1-1/2%) when made to farmers for agricultural purposes.

(c)(i) Retail sales of farm implements sold to farmers and used directly in the production of poultry, ratite, domesticated fish as defined in Section 69-7-501, livestock, livestock products, agricultural crops or ornamental plant crops or used for other agricultural purposes, and parts and labor used to maintain and/or repair such implements, shall be taxed at the rate of one and one-half percent (1-1/2%) when used on the farm.

(ii) The one and one-half percent (1-1/2%) rate shall also apply to all equipment used in logging, pulpwood operations or tree farming, and parts and labor used to maintain and/or repair such equipment, which is either:

1. Self-propelled, or
2. Mounted so that it is permanently attached to other equipment which is self-propelled or attached to other equipment drawn by a vehicle which is self-propelled.

In order to be eligible for the rate of tax provided for in this subparagraph (ii), such sales must be made to a professional logger. For the purposes of this subparagraph (ii), a "professional logger" is a person, corporation, limited liability company or other entity, or an agent thereof, who possesses a professional logger's permit issued by the Department of Revenue and who presents the permit to the seller at the time of purchase. The department shall establish an application process for a professional logger's permit to be issued, which shall include a requirement that the applicant submit a copy of documentation verifying that the applicant is certified according to Sustainable Forestry Initiative guidelines. Upon a determination that an applicant is a professional logger, the department shall issue the applicant a numbered professional logger's permit.

(d) Except as otherwise provided in subsection (3) of this section, retail sales of aircraft, automobiles, trucks, truck-tractors, semitrailers and manufactured or mobile homes shall be taxed at the rate of three percent (3%).

(e) Sales of manufacturing machinery or manufacturing machine parts when made to a manufacturer or custom processor for plant use only when the machinery and machine parts will be used exclusively and directly within this state in manufacturing a commodity for sale, rental or in processing for a fee shall be taxed at the rate of one and one-half percent (1-1/2%).

(f) Sales of machinery and machine parts when made to a technology intensive enterprise for plant use only when the machinery and machine parts will be used exclusively and directly within this state for industrial purposes, including, but not limited to, manufacturing or research and development activities, shall be taxed at the rate of one and one-half percent (1-1/2%). In order to be considered a technology intensive enterprise for purposes of this paragraph:

(i) The enterprise shall meet minimum criteria established by the Mississippi Development Authority;

(ii) The enterprise shall employ at least ten (10) persons in full-time jobs;

(iii) At least ten percent (10%) of the workforce in the facility operated by the enterprise shall be scientists, engineers or computer specialists;

(iv) The enterprise shall manufacture plastics, chemicals, automobiles, aircraft, computers or electronics; or shall be a research and development facility, a computer design or related facility, or a software publishing facility or other technology intensive facility or enterprise as determined by the Mississippi Development Authority;

(v) The average wage of all workers employed by the enterprise at the facility shall be at least one hundred fifty percent (150%) of the state average annual wage; and

(vi) The enterprise must provide a basic health care plan to all employees at the facility.

(g) Sales of materials for use in track and track structures to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission shall be taxed at the rate of three percent (3%).

(h) Sales of tangible personal property to electric power associations for use in the ordinary and necessary operation of their generating or distribution systems shall be taxed at the rate of one percent (1%).

(i) Wholesale sales of beer shall be taxed at the rate of seven percent (7%), and the retailer shall file a return and compute the retail tax on retail sales but may take credit for the amount of the tax paid to the wholesaler on said return covering the subsequent sales of same property, provided adequate invoices and records are maintained to substantiate the credit.

(j) Wholesale sales of food and drink for human consumption to full-service vending machine operators to be sold through vending machines

located apart from and not connected with other taxable businesses shall be taxed at the rate of eight percent (8%).

(k) Sales of equipment used or designed for the purpose of assisting disabled persons, such as wheelchair equipment and lifts, that is mounted or attached to or installed on a private carrier of passengers or light carrier of property, as defined in Section 27-51-101, at the time when the private carrier of passengers or light carrier of property is sold shall be taxed at the same rate as the sale of such vehicles under this section.

(*l*) Sales of the factory-built components of modular homes, panelized homes and precut homes, and panel constructed homes consisting of structural insulated panels, shall be taxed at the rate of three percent (3%).

(m) Sales of materials used in the repair, renovation, addition to, expansion and/or improvement of buildings and related facilities used by a dairy producer shall be taxed at the rate of three and one-half percent (3-1/2%). For the purposes of this paragraph (m), "dairy producer" means any person engaged in the production of milk for commercial use.

(2) From and after January 1, 1995, retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101, shall be taxed an additional two percent (2%).

(3) A manufacturer selling at retail in this state shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in this section.

HISTORY: Codes, 1942, § 10108; Laws, 1932, chs. 90, 91; Laws, 1934, chs. 119, 122; Laws, 1946, ch. 343; Laws, 1948, ch. 467, § 2; Laws, 1950, ch. 529; Laws, 1955, Ex Sess, ch. 109, § 9; Laws, 1958, ch. 574, § 6; Laws, 1960, ch. 167, § 1; Laws, 1962, ch. 596, §§ 1, 3; Laws, 1962, ch. 597, §§ 1, 3; Laws, 1964, ch. 532, § 1; Laws, 1964, ch. 531, § 2; Laws, 1965, Ex Sess, ch. 22, § 2; Laws, 1968, ch. 588, § 3; Laws, 1972, ch. 506, § 3; Laws, 1978, ch. 512, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 36; Laws, 1983, ch. 546, § 1; Laws, 1983, 2nd Ex Sess, ch. 6, § 5; Laws, 1984, 1st Ex Sess, ch. 10, § 3; Laws, 1985, ch. 351, § 1; Laws, 1985, ch. 516, § 2; Laws, 1987, ch. 322, § 26; Laws, 1987, ch. 426, § 1; Laws, 1988, ch. 506, § 1; Laws, 1992, ch. 419, § 3; Laws, 1992, ch. 509, § 1; Laws, 1994, ch. 563, § 7; Laws, 1998, ch. 410, § 1; Laws, 1999, ch. 452, § 1; Laws, 2005, ch. 532, § 19; Laws, 2005, 3rd Ex Sess, ch. 1, § 63; Laws, 2006, 2nd Ex Sess, ch. 1, § 1; Laws, 2007, ch. 359, § 5; Laws, 2009, ch. 493, § 1; Laws, 2014, ch. 505, § 2, effective from and after July 1, 2014; Laws, 2020, ch. 336, § 1, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, in (1)(c)(ii)2, deleted "permanently" preceding "attached to other equipment."

§ 27-65-22. Amusements.

(1) Upon every person engaging or continuing in any amusement business or activity, which shall include all manner and forms of entertainment and amusement, all forms of diversion, sport, recreation or pastime, shows, exhibitions, contests, displays, games or any other and all methods of obtaining admission charges, donations, contributions or monetary charges of any character, from the general public or a limited or selected number thereof,

directly or indirectly in return for other than tangible property or specific personal or professional services, whether such amusement is held or conducted in a public or private building, hotel, tent, pavilion, lot or resort, enclosed or in the open, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income received as admission, except as otherwise provided herein. In lieu of the rate set forth above, there is hereby imposed, levied and assessed, to be collected as hereinafter provided, a tax of three percent (3%) of gross revenue derived from sales of admission to publicly owned enclosed coliseums and auditoriums (except admissions to athletic contests between colleges and universities). There is hereby imposed, levied and assessed a tax of seven percent (7%) of gross revenue derived from sales of admission to events conducted on property managed by the Mississippi Veterans Memorial Stadium, which tax shall be administered in the manner prescribed in this chapter, subject, however, to the provisions of Sections 55-23-3 through 55-23-11.

(2) The operator of any place of amusement in this state shall collect the tax imposed by this section, in addition to the price charged for admission to any place of amusement, and under all circumstances the person conducting the amusement shall be liable for, and pay the tax imposed based upon the actual charge for such admission. Where permits are obtained for conducting temporary amusements by persons who are not the owners, lessees or custodians of the buildings, lots or places where the amusements are to be conducted, or where such temporary amusement is permitted by the owner, lessee or custodian of any place to be conducted without the procurement of a permit as required by this chapter, the tax imposed by this chapter shall be paid by the owner, lessee or custodian of such place where such temporary amusement is held or conducted, unless paid by the person conducting the amusement, and the applicant for such temporary permit shall furnish with the application therefor, the name and address of the owner, lessee or custodian of the premises upon which such amusement is to be conducted, and such owner, lessee or custodian shall be notified by the commission of the issuance of such permit, and of the joint liability for such tax.

(3) The tax imposed by this section shall not be levied or collected upon:

(a) Any admissions charged at any place of amusement operated by a religious, charitable or educational organization, or by a nonprofit civic club or fraternal organization (i) when the net proceeds of such admissions do not inure to any one or more individuals within such organization and are to be used solely for religious, charitable, educational or civic purposes; or (ii) when the entire net proceeds are used to defray the normal operating expenses of such organization, such as loan payments, maintenance costs, repairs and other operating expenses;

(b) Any admissions charged to hear gospel singing when promoted by a duly constituted local, bona fide nonprofit charitable or religious organization, irrespective of the fact that the performers and promoters are paid out of the proceeds of admissions collected, provided the program is composed entirely of gospel singing and not generally mixed with hillbilly or popular singing;

(c) Any admissions charged at any athletic games or contests between high schools or between grammar schools;

(d) Any admissions or tickets to or for baseball games between teams operated under a professional league franchise;

(e) Any admissions to county, state or community fairs, or any admissions to entertainments presented in community homes or houses which are publicly owned and controlled, and the proceeds of which do not inure to any individual or individuals;

(f) Any admissions or tickets to organized garden pilgrimages and to antebellum and historic houses when sponsored by an organized civic or garden club;

(g) Any admissions to any golf tournament held under the auspices of the Professional Golf Association or United States Golf Association wherein touring professionals compete, if such tournament is sponsored by a nonprofit association incorporated under the laws of the State of Mississippi where no dividends are declared and the proceeds do not inure to any individual or group;

(h) Any admissions to university or community college conference, state, regional or national playoffs or championships;

(i) Any admissions or fees charged by any county or municipally owned and operated swimming pools, golf courses and tennis courts other than sales or rental of tangible personal property;

(j) Any admissions charged for the performance of symphony orchestras, operas, vocal or instrumental artists in which professional or amateur performers are compensated out of the proceeds of such admissions, when sponsored by local music or charity associations, or amateur dramatic performances or professional dramatic productions when sponsored by a children's dramatic association, where no dividends are declared, profits received, nor any salary or compensation paid to any of the members of such associations, or to any person for procuring or producing such performance;

(k) Any admissions or tickets to or for hockey games between teams operated under a professional league franchise;

(*l*) Any admissions or tickets to or for events sanctioned by the Mississippi Athletic Commission that are held within publicly owned enclosed coliseums and auditoriums;

(m) Guided tours on any navigable waters of this state, which include providing accommodations, guide services and/or related equipment operated by or under the direction of the person providing the tour, for the purposes of outdoor tourism;

(n) Any admissions to events held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds from the grant program authorized under Section 18 of Chapter 530, Laws of 1995; and

(o)(i) Any admissions charged at events, activities or entertainments:

1. Which are open to the public and held in or on parks, lands or buildings which are publicly owned, leased, used and/or controlled by a municipality, or any agency thereof;

2. Which are created and sponsored by the municipality, or an agency thereof; and

3. The proceeds of which do not inure to the benefit of any individual or individuals; however,

(ii) The governing authorities of a municipality may require the tax imposed by this section to be levied and collected at events, activities or entertainments described in subparagraph (i) of this paragraph by:

1. Adopting an ordinance requiring the levy and collection of the tax;

2. Providing the Department of Revenue with a certified copy of the ordinance requiring the tax to be levied and assessed at least thirty (30) days prior to the effective date of the ordinance;

(iii) If the ordinance described in subparagraph (ii) of this paragraph is repealed, the municipality shall provide the Department of Revenue with a certified copy of the repeal of the ordinance at least thirty (30) days prior to the effective date of the repeal..

HISTORY: Laws, 1978, ch. 501, § 1; Laws, 1979, ch. 428, § 2; Laws, 1982, Ex Sess, ch. 17, § 38; Laws, 1983, 2nd Ex Sess, ch. 6, § 7; Laws, 1984, 1st Ex Sess, ch. 10, § 5; Laws, 1989, ch. 479, § 1; Laws, 1989, ch. 548, § 7; Laws, 1990, ch. 312, § 1; Laws, 1992, ch. 419, § 5; Laws, 1994, ch. 322, § 1; Laws, 1996, ch. 524, § 1; Laws, 1997, ch. 568, § 1; Laws, 2007, ch. 512, § 1; Laws, 2014, ch. 528, § 1, eff from and after July 1, 2014; Laws, 2018, ch. 435, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment added (3)(o) and made related changes.

§ 27-65-27. Permit to engage in business.

(1) Any person who engages, or who intends to engage, in any business or activity which will subject such person to a privilege tax imposed by this chapter, shall apply to the commissioner for a permit to engage in and to conduct any business or activity upon the condition that he shall pay the tax accruing to the State of Mississippi under the provisions of this chapter, and shall keep adequate records of such business or activity as required by this chapter. By making an application for a permit issued pursuant to this section, a person agrees, regardless of his presence in this state, to:

(a) Be subject to the jurisdiction of this state for purposes of taxation;

(b) Collect and remit all taxes levied under this chapter on the type of business or activity to be conducted by the applicant;

(c) Be subject to all the provisions of this chapter.

(2) Upon receipt of the permit, the applicant shall be duly licensed under this chapter to engage in and conduct the business or activity. The permit shall continue in force so long as the person to whom it is issued shall continue in the same business at the same location, unless revoked by the commissioner for cause.

(3) The commissioner shall require of every person desiring to engage in business within this state who maintains no permanent place of business within this state, of every person desiring to engage in the business of making

sales of mobile homes, a cash bond or an approved surety bond in an amount sufficient to cover twice the estimated tax liability for a period of three (3) months. However, the bond shall in no case be less than One Hundred Dollars ($100.00) and the tax may be prepaid in lieu of filing bond if the amount is approved by the commissioner. This bond shall be filed with the commissioner prior to the issuance of a permit to do business and before any such person may engage in business within this state. Failure to comply with the provision will subject such person to the penalties provided by this chapter.

(4) The commissioner is authorized to deny the application for a permit or revoke the permit of any person who has failed or is failing to comply with any of the provisions of this chapter. The commissioner may also deny the application for a permit or revoke the permit of any person who has failed to satisfy all of the finally determined tax liabilities owed by that person. If the applicant or taxpayer is an entity, the commissioner may deny the application for a permit or revoke the permit if any partner, member, principal officer or director of such entity has failed to satisfy all of the finally determined tax liabilities owed by that partner, member, principal officer or director. Any denial or revocation of an entity's permit based on a partner, member, principal officer or director's finally determined tax liability shall only be authorized if the partner, member, principal officer or director owns ten percent (10%) or more of the entity and is or will be exercising responsibility for fiscal management. In lieu of denying or revoking an entity's permit, the commissioner may accept an increased or additional bond from the entity to cover the additional risk involved with having an individual with a finally determined tax liability involved. As used in this subsection, "finally determined tax liabilities" means any state tax, fee, penalty and/or interest owed by a person to the Department of Revenue where the assessment of the liability has been made against that person as provided by law and such assessment is not subject to any further timely filed administrative or judicial review. Revocation of such permit, or engaging or continuing in business after such permit is revoked or engaging in business without a permit, shall subject the person to all the penalties imposed by this chapter.

(5) Any person liable for the tax who fails to obtain a permit from the commissioner, or who continues in business after such permit has been revoked, or who fails to make his returns for taxation as provided, or who fails to keep adequate records and invoices provided by this chapter, or who fails or refuses to permit inspection of such records, or who fails to pay any taxes due hereunder, shall forfeit his rights to do business in this state until he complies with all the provisions of this chapter and until he enters into a bond, with sureties, to be approved by the commissioner, in an amount not to exceed twice the amount of all taxes estimated to become due under this chapter by the person for any period of three (3) months, conditioned to comply with the provisions of this chapter, and pay all taxes legally due by him.

(6) If any person is engaged in or continuing in this state in any business or activity without obtaining a permit, or after the permit has been revoked, or without filing a required bond, or without keeping and allowing inspection of

all records required by this chapter, or without making a return, or returns, and without paying all taxes due by him hereunder, it shall be the duty of the commissioner to proceed by injunction to prevent the continuance of the business. Any temporary injunction enjoining the continuance of the business shall be granted without notice by a judge or chancellor now authorized to grant injunctions.

HISTORY: Codes, 1942, § 10115; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1948, ch. 440, § 1; Laws, 1952, ch. 403, § 1; Laws, 1955, Ex Sess, ch. 109, § 15; Laws, 1978, ch. 476, § 3, ch. 512, § 2; Laws, 1979, ch. 436, § 1; Laws, 2002, ch. 520, § 3; Laws, 2005, ch. 499, § 27, eff from and after July 1, 2005; Laws, 2020, ch. 449, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (4), added the third through fifth sentences, and in the sixth sentence, substituted "Department of Revenue" for "Mississippi State Tax Commission."

§ 27-65-33. Returns.

(1)(a) Except as otherwise provided in this section, the taxes levied by this chapter shall be due and payable on or before the twentieth day of the month next succeeding the month in which the tax accrues, except as otherwise provided. Returns and payments placed in the mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed. The taxpayer shall make a return showing the gross proceeds of sales or the gross income of the business, and any and all allowable deductions, or exempt sales, and compute the tax due for the period covered.

(b) As compensation for collecting sales and use taxes, complying fully with the applicable statutes, filing returns and supplements thereto and paying all taxes by the twentieth of the month following the period covered, the taxpayer may discount and retain two percent (2%) of the liability on each return subject to the following limitations:

(i) The compensation or discount shall not apply to taxes levied under the provisions of Sections 27-65-19 and 27-65-21, or on charges for ginning cotton under Section 27-65-23.

(ii) The compensation or discount shall not apply to taxes collected by a county official or state agency.

(iii) The compensation or discount shall not exceed Fifty Dollars ($50.00) per month, or Six Hundred Dollars ($600.00) per calendar year, per business location on each state sales tax return, or on each use tax return.

(iv) The compensation or discount shall not apply to any wholesale tax, the rate of which is equal to or greater than the tax rate applicable to retail sales of the same property or service. The retailer of such items shall

be entitled to the compensation based on the tax computed on retail sales before application of the credit for any tax paid to the wholesaler, jobber or other person.

(v) The compensation or discount allowed and taken for any filing period may be reassessed and collected when an audit of a taxpayer's records reveals a tax deficiency for that period.

(c) As compensation for collecting any tax imposed under the authority of a local and private law of the State of Mississippi which is collected and paid to the Department of Revenue in the same or similar manner that state sales taxes are collected and paid, complying fully with such applicable law, filing returns and supplements thereto and paying all taxes by the twentieth of the month following the period covered, the taxpayer may discount and retain two percent (2%) of the liability on each return subject to the following limitations:

(i) The compensation or discount shall not apply to taxes collected by a county official or state agency.

(ii) The compensation or discount shall not exceed Fifty Dollars ($50.00) per month, or Six Hundred Dollars ($600.00) per calendar year, per business location on each tax return.

(iii) The compensation or discount allowed and taken for any filing period may be reassessed and collected when an audit of a taxpayer's records reveals a tax deficiency for that period.

(2) A taxpayer required to collect sales taxes under this chapter and having an average monthly sales tax liability of at least Fifty Thousand Dollars ($50,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2014, and on or before the twenty-fifth day of June of each succeeding year thereafter, an amount equal to at least seventy-five percent (75%) of such taxpayer's estimated sales tax liability for the month of June of the current calendar year, or an amount equal to at least seventy-five percent (75%) of the taxpayer's sales tax liability for the month of June of the preceding calendar year. For the purposes of calculating a taxpayer's estimated sales tax liability for the month of June of the current calendar year, the taxpayer does not have to include taxes due on credit sales for which the taxpayer has not received payment before June 20. Payments required to be made under this subsection must be received by the Department of Revenue no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this subsection and the taxpayer's actual sales tax liability for the month of June for which the estimated payment was required to be made. Payments made by a taxpayer under this subsection shall not be considered to be collected for the purposes of any sales tax diversions required by law until the taxpayer files a return for the actual sales taxes collected during the month of June. This subsection shall not apply to any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political subdivision of

the State of Mississippi, or any agency, department, institution or instrumentality of any political subdivision of the State of Mississippi.

(3) All returns shall be sworn to by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, or authorized agent, if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust, estate, or in any other group or combination acting as a unit, any individual delegated by such firm shall swear to the return on behalf of the taxpayer. The commissioner may prescribe methods by which the taxpayer may swear to his return.

(4) The commissioner may promulgate rules and regulations to require or permit filing periods of any duration, in lieu of monthly filing periods, for any taxpayer or group thereof.

(5) The commissioner may require the execution and filing by the taxpayer with the commissioner of a good and solvent bond with some surety company authorized to do business in Mississippi as surety thereon in an amount double the aggregate tax liability by such taxpayer for any previous three-month period within the last calendar year or estimated three (3) months' tax liability. The bond is to be conditioned for the prompt payment of such taxes as may be due for each such return.

(6) The commissioner, for good cause, may grant such reasonable additional time within which to make any return required under the provisions of this chapter as he may deem proper, but the time for filing any return shall not be extended beyond the twentieth of the month next succeeding the regular due date of the return without the imposition of interest at the rate of one-half of one percent (1/2 of 1%) per month or fractional part of a month from the time the return was due until the tax is paid.

(7) For persistent, willful or recurring failure to make any return and pay the tax shown thereby to be due by the time specified, there shall be added to the amount of tax shown to be due ten percent (10%) damages, or interest at the rate of one-half of one percent (1/2 of 1%) per month, or both.

(8) Any taxpayer may, upon making application therefor, obtain from the commissioner an extension of time for the payment of taxes due on credit sales until collections thereon have been made. When such extension is granted, the taxpayer shall thereafter include in each monthly or quarterly report all collections made during the preceding month or quarter, and shall pay the taxes due thereon at the time of filing such report. Such permission may be revoked or denied at the discretion of the commissioner when, in his opinion, a total sales basis will best reflect the taxable income or expedite examination of the taxpayer's records.

(9) Any taxpayer reporting credit sales before collection thereof has been made may take credit on subsequent returns or reports for bad debts actually charged off, if such amounts charged off have previously been included in taxable gross income or taxable gross proceeds of sales, as the case may be, and the tax paid thereon. However, any amounts subsequently collected on accounts that have been charged off as bad debts shall be included in subsequent reports and the tax shall be paid thereon.

(10) In cases where an extension of time has been granted by the commissioner for payment of taxes due on credit sales and the taxpayer thereafter discontinues the business, such taxpayer shall be required to file with the commissioner within ten (10) days, or such further time as the commissioner may direct, from the date of the discontinuance of such business, a special report showing the amounts of any credit sales which have not been included in determining the measure of the tax previously paid and any other information with reference to credit sales as the commissioner may require. The commissioner shall thereupon investigate the facts with reference to credit sales and the condition of the accounts, and shall determine, from the best evidence available, the value of all open accounts, notes or other evidence of debt arising from credit sales. The value of all notes, open accounts and other evidence of debt, as thus determined by the commissioner, shall be used in determining the amount of the tax for which such taxpayer shall be liable. When the amount of the tax shall have been ascertained, the taxpayer shall be required to pay the same within ten (10) days or such further time as the commissioner may allow, notwithstanding the fact that such note or accounts may still remain uncollected.

HISTORY: Codes, 1942, § 10118; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1952, ch. 403, § 3; Laws, 1955, Ex Sess, ch. 109, § 18; Laws, 1958, ch. 575, § 2; Laws, 1968, ch. 588, § 10; Laws, 1976, ch. 395; Laws, 1978, ch. 476, § 5; Laws, 1984, ch. 458, § 3; Laws, 1986, ch. 451, § 4; Laws, 1994, ch. 309 § 1; Laws, 1995, ch. 508, § 2; Laws, 1995, ch. 549, § 2; Laws, 2002, ch. 539, § 2; Laws, 2005, ch. 330, § 2; Laws, 2007, ch. 536, § 2; Laws, 2008, ch. 507, § 10; Laws, 2009, ch. 563, § 8; Laws, 2010, ch. 562, § 8; Laws, 2012, ch. 547, § 4; Laws, 2013, ch. 420, § 1, eff from and after passage (approved March 20, 2013); Laws, 2020, ch. 372, § 5, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "one-half of one percent (1/2 of 1%)" for "one percent (1%)" in (6) and (7).

§ 27-65-53. Refunds.

If the commissioner finds that the taxpayer has overpaid his tax for any reason and the taxpayer has discontinued business and there is no subsequent liability upon which the excess may be credited, or if the amount of the excess so paid shall exceed the estimated liability for the next twelve (12) months, the excess shall be refunded to the taxpayer. Such amount shall be certified to the State Auditor of Public Accounts by the commission. The said auditor is hereby authorized to make such investigation and audit of the claim as he finds necessary. If he finds that the commissioner is correct in his determination, the auditor may issue his warrant to the State Treasurer in favor of the taxpayer for the amount of tax erroneously paid into the State Treasury, such refunds to be made from current sales tax collections. If part of the overpayment has been disbursed to any municipality or state institution of higher learning, under authority of Section 27-65-75, the municipality or state institution of higher learning, having erroneously received the money, shall adjust the amount with the commissioner, or the overpayment may be withheld by the state from any

funds due by the state to the municipality or state institution of higher learning.

Provided, that where the taxpayer has overpaid his tax, the commissioner may give credit for same and allow the taxpayer to take credit on a subsequent return or, if necessary, in his discretion, have the taxpayer file for a refund as provided herein.

If any overpayment of tax as reflected in an application or amended return, or both, filed by the taxpayer, and verified by the commissioner or otherwise determined to be due by the commissioner or commission, is not refunded or credited to a taxpayer's account within ninety (90) days after the application or amended return is filed or the date the commission or commissioner determines a refund is due, whichever is later, interest at the rate of one-half of one percent (1/2 of 1%) per month shall be allowed on such overpayment computed for the period after expiration of the ninety-day period provided herein to the date of payment.

HISTORY: Codes, 1942, § 10121.4; Laws, 1971, ch. 464, § 1; Laws, 1981, ch. 328, § 2; Laws, 1991, ch. 383, § 1; Laws, 1998, ch. 337, § 2; Laws, 2006, ch. 365, § 2, eff from and after July 1, 2006; Laws, 2020, ch. 372, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "one-half of one percent (1/2 of 1%)" for "one percent (1%)" in the third paragraph.

§ 27-65-75. Distribution of sales taxes, contractor taxes, motor fuels taxes, and other revenue collected under this chapter.

On or before the fifteenth day of each month, the revenue collected under the provisions of this chapter during the preceding month shall be paid and distributed as follows:

(1)(a) On or before August 15, 1992, and each succeeding month thereafter through July 15, 1993, eighteen percent (18%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to the municipality and paid to the municipal corporation. Except as otherwise provided in this paragraph (a), on or before August 15, 1993, and each succeeding month thereafter, eighteen and one-half percent (18-1/2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within a municipal corporation shall be allocated for distribution to the municipality and paid to the municipal corporation. However, in the event the State Auditor issues a certificate of noncompliance pursuant to Section 21-35-31, the Department of Revenue shall withhold ten percent (10%) of the allocations and payments to the municipality that would otherwise be

payable to the municipality under this paragraph (a) until such time that the department receives written notice of the cancellation of a certificate of noncompliance from the State Auditor.

A municipal corporation, for the purpose of distributing the tax under this subsection, shall mean and include all incorporated cities, towns and villages.

Monies allocated for distribution and credited to a municipal corporation under this paragraph may be pledged as security for a loan if the distribution received by the municipal corporation is otherwise authorized or required by law to be pledged as security for such a loan.

In any county having a county seat that is not an incorporated municipality, the distribution provided under this subsection shall be made as though the county seat was an incorporated municipality; however, the distribution to the municipality shall be paid to the county treasury in which the municipality is located, and those funds shall be used for road, bridge and street construction or maintenance in the county.

(b) On or before August 15, 2006, and each succeeding month thereafter, eighteen and one-half percent (18-1/2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities on the campus of a state institution of higher learning or community or junior college whose campus is not located within the corporate limits of a municipality, shall be allocated for distribution to the state institution of higher learning or community or junior college and paid to the state institution of higher learning or community or junior college.

(c) On or before August 15, 2018, and each succeeding month thereafter until August 14, 2019, two percent (2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within the corporate limits of the City of Jackson, Mississippi, shall be deposited into the Capitol Complex Improvement District Project Fund created in Section 29-5-215. On or before August 15, 2019, and each succeeding month thereafter until August 14, 2020, four percent (4%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within the corporate limits of the City of Jackson, Mississippi, shall be deposited into the Capitol Complex Improvement District Project Fund created in Section 29-5-215. On or before August 15, 2020, and each succeeding month thereafter, six percent (6%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within the corporate limits of the City of Jackson, Mississippi, shall be deposited into the Capitol Complex Improvement District Project Fund created in Section 29-5-215.

(d)(i) On or before the fifteenth day of the month that the diversion authorized by this section begins, and each succeeding month thereafter, eighteen and one-half percent (18-½%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a redevelopment project area developed under a redevelopment plan adopted under the Tax Increment Financing Act (Section 21-45-1 et seq.) shall be allocated for distribution to the county in which the project area is located if:

(1) The county borders on the Mississippi Sound and the State of Alabama;

(2) The county has issued bonds under Section 21-45-9 to finance all or a portion of a redevelopment project in the redevelopment project area;

(3) Any debt service for the indebtedness incurred is outstanding; and

(4) A development with a value of Ten Million Dollars ($10,000,000.00) or more is, or will be, located in the redevelopment area.

(ii) Before any sales tax revenue may be allocated for distribution to a county under this paragraph, the county shall certify to the Department of Revenue that the requirements of this paragraph have been met, the amount of bonded indebtedness that has been incurred by the county for the redevelopment project and the expected date the indebtedness incurred by the county will be satisfied.

(iii) The diversion of sales tax revenue authorized by this paragraph shall begin the month following the month in which the Department of Revenue determines that the requirements of this paragraph have been met. The diversion shall end the month the indebtedness incurred by the county is satisfied. All revenue received by the county under this paragraph shall be deposited in the fund required to be created in the tax increment financing plan under Section 21-45-11 and be utilized solely to satisfy the indebtedness incurred by the county.

(2) On or before September 15, 1987, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, One Million One Hundred Twenty-five Thousand Dollars ($1,125,000.00) shall be allocated for distribution to municipal corporations as defined under subsection (1) of this section in the proportion that the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each such municipality during the preceding fiscal year bears to the total gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in municipalities statewide during the preceding fiscal year. The Department of Revenue shall require all distributors of gasoline and diesel fuel to report to the department monthly the total number of gallons of gasoline and diesel fuel sold by them to consumers and retailers in each municipality during the preceding month.

The Department of Revenue shall have the authority to promulgate such rules and regulations as is necessary to determine the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each municipality. In determining the percentage allocation of funds under this subsection for the fiscal year beginning July 1, 1987, and ending June 30, 1988, the Department of Revenue may consider gallons of gasoline and diesel fuel sold for a period of less than one (1) fiscal year. For the purposes of this subsection, the term "fiscal year" means the fiscal year beginning July 1 of a year.

(3) On or before September 15, 1987, and on or before the fifteenth day of each succeeding month, until the date specified in Section 65-39-35, the proceeds derived from contractors' taxes levied under Section 27-65-21 on contracts for the construction or reconstruction of highways designated under the highway program created under Section 65-3-97 shall, except as otherwise provided in Section 31-17-127, be deposited into the State Treasury to the credit of the State Highway Fund to be used to fund that highway program. The Mississippi Department of Transportation shall provide to the Department of Revenue such information as is necessary to determine the amount of proceeds to be distributed under this subsection.

(4) On or before August 15, 1994, and on or before the fifteenth day of each succeeding month through July 15, 1999, from the proceeds of gasoline, diesel fuel or kerosene taxes as provided in Section 27-5-101(a)(ii)1, Four Million Dollars ($4,000,000.00) shall be deposited in the State Treasury to the credit of a special fund designated as the "State Aid Road Fund," created by Section 65-9-17. On or before August 15, 1999, and on or before the fifteenth day of each succeeding month, from the total amount of the proceeds of gasoline, diesel fuel or kerosene taxes apportioned by Section 27-5-101(a)(ii)1, Four Million Dollars ($4,000,000.00) or an amount equal to twenty-three and one-fourth percent (23-1/4%) of those funds, whichever is the greater amount, shall be deposited in the State Treasury to the credit of the "State Aid Road Fund," created by Section 65-9-17. Those funds shall be pledged to pay the principal of and interest on state aid road bonds heretofore issued under Sections 19-9-51 through 19-9-77, in lieu of and in substitution for the funds previously allocated to counties under this section. Those funds may not be pledged for the payment of any state aid road bonds issued after April 1, 1981; however, this prohibition against the pledging of any such funds for the payment of bonds shall not apply to any bonds for which intent to issue those bonds has been published for the first time, as provided by law before March 29, 1981. From the amount of taxes paid into the special fund under this subsection and subsection (9) of this section, there shall be first deducted and paid the amount necessary to pay the expenses of the Office of State Aid Road Construction, as authorized by the Legislature for all other general and special fund agencies. The remainder of the fund shall be allocated monthly to the several counties in accordance with the following formula:

(a) One-third (1/3) shall be allocated to all counties in equal shares;

(b) One-third (1/3) shall be allocated to counties based on the proportion that the total number of rural road miles in a county bears to the total number of rural road miles in all counties of the state; and

(c) One-third (1/3) shall be allocated to counties based on the proportion that the rural population of the county bears to the total rural population in all counties of the state, according to the latest federal decennial census.

For the purposes of this subsection, the term "gasoline, diesel fuel or kerosene taxes" means such taxes as defined in paragraph (f) of Section 27-5-101.

The amount of funds allocated to any county under this subsection for any fiscal year after fiscal year 1994 shall not be less than the amount allocated to the county for fiscal year 1994.

Any reference in the general laws of this state or the Mississippi Code of 1972 to Section 27-5-105 shall mean and be construed to refer and apply to subsection (4) of Section 27-65-75.

(5) One Million Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars ($1,666,666.00) each month shall be paid into the special fund known as the "State Public School Building Fund" created and existing under the provisions of Sections 37-47-1 through 37-47-67. Those payments into that fund are to be made on the last day of each succeeding month hereafter.

(6) An amount each month beginning August 15, 1983, through November 15, 1986, as specified in Section 6, Chapter 542, Laws of 1983, shall be paid into the special fund known as the Correctional Facilities Construction Fund created in Section 6, Chapter 542, Laws of 1983.

(7) On or before August 15, 1992, and each succeeding month thereafter through July 15, 2000, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited by the department into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars ($42,000,000.00). Thereafter, the amounts diverted under this subsection (7) during the fiscal year in excess of Forty-two Million Dollars ($42,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(8) On or before August 15, 1992, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total

sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the Education Enhancement Fund created under Section 37-61-33.

(9) On or before August 15, 1994, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, Two Hundred Fifty Thousand Dollars ($250,000.00) shall be paid into the State Aid Road Fund.

(10) On or before August 15, 1994, and each succeeding month thereafter through August 15, 1995, from the revenue collected under this chapter during the preceding month, Two Million Dollars ($2,000,000.00) shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(11) Notwithstanding any other provision of this section to the contrary, on or before February 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(12) Notwithstanding any other provision of this section to the contrary, on or before August 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(1) on retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101 and the corresponding levy in Section 27-65-23 on the rental or lease of these vehicles, shall be deposited, after diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(13) On or before July 15, 1994, and on or before the fifteenth day of each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-22 that is derived from activities held on the Mississippi State Fairgrounds Complex shall be paid into a special fund that is created in the State Treasury and shall be expended upon legislative appropriation solely to defray the costs of repairs and renovation at the Trade Mart and Coliseum.

(14) On or before August 15, 1998, and each succeeding month thereafter through July 15, 2005, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited in an amount not to exceed Two Million Dollars ($2,000,000.00) into the special fund created under Section 69-37-39. On or before August 15, 2007, and each succeeding month thereafter through July 15, 2010, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited in an amount not

to exceed Two Million Dollars ($2,000,000.00) into the special fund created under Section 69-37-39 until all debts or other obligations incurred by the Certified Cotton Growers Organization under the Mississippi Boll Weevil Management Act before January 1, 2007, are satisfied in full. On or before August 15, 2010, and each succeeding month thereafter through July 15, 2011, fifty percent (50%) of that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited into the special fund created under Section 69-37-39 until such time that the total amount deposited into the fund during a fiscal year equals One Million Dollars ($1,000,000.00). On or before August 15, 2011, and each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited into the special fund created under Section 69-37-39 until such time that the total amount deposited into the fund during a fiscal year equals One Million Dollars ($1,000,000.00).

(15) Notwithstanding any other provision of this section to the contrary, on or before September 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-19(1)(d)(i)2, and 27-65-19(1)(d)(i)3 shall be deposited, without diversion, into the Telecommunications Ad Valorem Tax Reduction Fund established in Section 27-38-7.

(16)(a) On or before August 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a project as defined in Section 57-30-1 shall be deposited, after all diversions except the diversion provided for in subsection (1) of this section, into the Sales Tax Incentive Fund created in Section 57-30-3.

(b) On or before August 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-26-1 through 57-26-5, shall be deposited, after the diversions required in subsections (7) and (8) of this section, into the Tourism Project Sales Tax Incentive Fund created in Section 57-26-3.

(17) Notwithstanding any other provision of this section to the contrary, on or before April 15, 2002, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under Section 27-65-23 on sales of parking services of parking garages and lots at airports shall be deposited, without diversion, into the special fund created under Section 27-5-101(d).

(18) [Repealed]

(19)(a) On or before August 15, 2005, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a

business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and the revenue collected on the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11 (provided that such sales made to a business enterprise are made on the premises of the business enterprise), shall, except as otherwise provided in this subsection (19), be deposited, after all diversions, into the Redevelopment Project Incentive Fund as created in Section 57-91-9.

(b) For a municipality participating in the Economic Redevelopment Act created in Sections 57-91-1 through 57-91-11, the diversion provided for in subsection (1) of this section attributable to the gross proceeds of sales of a business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and attributable to the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11 (provided that such sales made to a business enterprise are made on the premises of the business enterprise), shall be deposited into the Redevelopment Project Incentive Fund as created in Section 57-91-9, as follows:

(i) For the first six (6) years in which payments are made to a developer from the Redevelopment Project Incentive Fund, one hundred percent (100%) of the diversion shall be deposited into the fund;

(ii) For the seventh year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, eighty percent (80%) of the diversion shall be deposited into the fund;

(iii) For the eighth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, seventy percent (70%) of the diversion shall be deposited into the fund;

(iv) For the ninth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, sixty percent (60%) of the diversion shall be deposited into the fund; and

(v) For the tenth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, fifty percent (50%) of the funds shall be deposited into the fund.

(20) On or before January 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-28-1 through 57-28-5 shall be deposited, after the diversions required in subsections (7) and (8) of this section, into the Tourism Sales Tax Incentive Fund created in Section 57-28-3.

(21)(a) On or before April 15, 2007, and each succeeding month thereafter through June 15, 2013, One Hundred Fifty Thousand Dollars ($150,000.00) of the sales tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the MMEIA Tax Incentive Fund created in Section 57-101-3.

(b) On or before July 15, 2013, and each succeeding month thereafter, One Hundred Fifty Thousand Dollars ($150,000.00) of the sales tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the Mississippi Development Authority Job Training Grant Fund created in Section 57-1-451.

(22) Notwithstanding any other provision of this section to the contrary, on or before August 15, 2009, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-201 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(23)(a) On or before August 15, 2019, and each month thereafter through July 15, 2020, one percent (1%) of the total sales tax revenue collected during the preceding month from restaurants and hotels shall be allocated for distribution to the Mississippi Development Authority Tourism Advertising Fund established under Section 57-1-64, to be used exclusively for the purpose stated therein. On or before August 15, 2020, and each month thereafter through July 15, 2021, two percent (2%) of the total sales tax revenue collected during the preceding month from restaurants and hotels shall be allocated for distribution to the Mississippi Development Authority Tourism Advertising Fund established under Section 57-1-64, to be used exclusively for the purpose stated therein. On or before August 15, 2021, and each month thereafter, three percent (3%) of the total sales tax revenue collected during the preceding month from restaurants and hotels shall be allocated for distribution to the Mississippi Development Authority Tourism Advertising Fund established under Section 57-1-64, to be used exclusively for the purpose stated therein. The revenue diverted pursuant to this subsection shall not be available for expenditure until February 1, 2020.

(b) The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) must provide an annual report to the Legislature indicating the amount of funds deposited into the Mississippi Development Authority Tourism Advertising Fund established under Section 57-1-64, and a detailed record of how the funds are spent.

(24) The remainder of the amounts collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Fund.

(25)(a) It shall be the duty of the municipal officials of any municipality that expands its limits, or of any community that incorporates as a municipality, to notify the commissioner of that action thirty (30) days before the effective date. Failure to so notify the commissioner shall cause the municipality to forfeit the revenue that it would have been entitled to receive during this period of time when the commissioner had no knowledge of the action.

(b)(i) Except as otherwise provided in subparagraph (ii) of this paragraph, if any funds have been erroneously disbursed to any municipality or any overpayment of tax is recovered by the taxpayer, the

commissioner may make correction and adjust the error or overpayment with the municipality by withholding the necessary funds from any later payment to be made to the municipality.

(ii) Subject to the provisions of Sections 27-65-51 and 27-65-53, if any funds have been erroneously disbursed to a municipality under subsection (1) of this section for a period of three (3) years or more, the maximum amount that may be recovered or withheld from the municipality is the total amount of funds erroneously disbursed for a period of three (3) years beginning with the date of the first erroneous disbursement. However, if during such period, a municipality provides written notice to the Department of Revenue indicating the erroneous disbursement of funds, then the maximum amount that may be recovered or withheld from the municipality is the total amount of funds erroneously disbursed for a period of one (1) year beginning with the date of the first erroneous disbursement.

HISTORY: Codes, 1942, § 10127; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1950, ch. 391; Laws, 1952, ch. 289; Laws, 1955, Ex Sess, ch. 107; Laws, 1960, ch. 366; Laws, 1962, ch. 599, § 3; Laws, 1966, ch. 652, § 1; Laws, 1968, ch. 588, § 11; Laws, 1972, ch. 535, § 1; Laws, 1974, ch. 509, § 1; Laws, 1978, ch. 503, § 1; Laws, 1979, chs. 302, § 10, 453, § 1; Laws, 1981, ch. 464, § 20; Laws, 1983, ch. 542, § 1; Laws, 1984, ch. 488, § 178; Laws, 1985, ch. 537, § 1; Laws, 1987, ch. 322, § 28; Laws, 1987, ch. 527, § 1; Laws, 1988, ch. 353; Laws 1992, ch. 419, § 8; Laws 1992, ch. 565, § 1; Laws 1993, ch. 473, § 2; Laws 1994, ch. 557, § 12; Laws 1994, ch. 563, § 8; Laws 1994, ch. 570, § 20; Laws 1994, ch. 565, § 1; Laws 1995, ch. 521, § 5; Laws 1995, ch. 563, § 22; Laws 1997, ch. 566, § 1; Laws 1997, ch. 612, § 26; Laws 1998, ch. 584, § 2; Laws, 1999, ch. 535, § 1; Laws, 1999, ch. 575, § 7; Laws, 2000, ch. 303, § 7; Laws, 2000, ch. 616, § 3; Laws, 2000, ch. 617, § 1; Laws, 2002, ch. 434, § 1; Laws, 2002, ch. 520, § 4; Laws, 2002, ch. 582, § 7; Laws, 2003, ch. 540, § 1; Laws, 2004, ch. 595, § 9; Laws, 2005, ch. 369, § 1; Laws, 2005, ch. 468, § 10; Laws, 2005, 2nd Ex Sess, ch. 2, § 4; Laws, 2005, 5th Ex Sess, ch. 12, § 5; Laws, 2006, ch. 365, § 1; Laws, 2006, 1st Ex Sess, ch. 2, § 7; Laws, 2007, ch. 303, § 26; Laws, 2007, ch. 493, § 1; Laws, 2007, ch. 562, § 1; Laws, 2007, ch. 574, § 4; Laws, 2007, 1st Ex Sess, ch. 1, § 16; Laws, 2009, ch. 562, § 4; Laws, 2010, ch. 449, § 10; Laws, 2010, ch. 459, § 1; Laws, 2011, ch. 432, § 1; Laws, 2013, ch. 447, § 3; Laws, 2013, ch. 537, § 3; Laws, 2016, ch. 361, § 1; Laws, 2017, ch. 444, § 11, eff from and after July 1, 2017; Laws, 2019, ch. 391, § 1, eff from and after July 1, 2019; Laws, 2019, ch. 447, § 2, eff from and after July 1, 2019.

Joint Legislative Committee Note — Section 1 of Chapter 391, Laws of 2019, effective July 1, 2019 (approved March 22, 2019), amended this section. Section 2 of Chapter 447, Laws of 2019, effective July 1, 2019 (approved April 3, 2019), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee.

Amendment Notes — The first 2019 amendment (ch. 391) added (1)(d).

The second 2019 amendment (ch. 447) added (23) and redesignated the remaining subsections accordingly.

§ 27-65-101. Exemptions; industrial [Paragraph (1)(pp) repealed effective July 1, 2022].

(1) The exemptions from the provisions of this chapter which are of an industrial nature or which are more properly classified as industrial exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by the provisions of the Constitution of the United States or the State of Mississippi. No industrial exemption as now provided by any other section except Section 57-3-33 shall be valid as against the tax herein levied. Any subsequent industrial exemption from the tax levied hereunder shall be provided by amendment to this section. No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21.

The tax levied by this chapter shall not apply to the following:

(a) Sales of boxes, crates, cartons, cans, bottles and other packaging materials to manufacturers and wholesalers for use as containers or shipping materials to accompany goods sold by said manufacturers or wholesalers where possession thereof will pass to the customer at the time of sale of the goods contained therein and sales to anyone of containers or shipping materials for use in ships engaged in international commerce.

(b) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) to a manufacturer for use directly in manufacturing or processing a product for sale or rental or repairing or reconditioning vessels or barges of fifty (50) tons load displacement and over. For the purposes of this exemption, electricity used directly in the electrolysis process in the production of sodium chlorate shall be considered a raw material. This exemption shall not apply to any property used as fuel except to the extent that such fuel comprises by-products which have no market value.

(c) The gross proceeds of sales of dry docks, offshore drilling equipment for use in oil or natural gas exploration or production, vessels or barges of fifty (50) tons load displacement and over, when the vessels or barges are sold by the manufacturer or builder thereof. In addition to other types of equipment, offshore drilling equipment for use in oil or natural gas exploration or production shall include aircraft used predominately to transport passengers or property to or from offshore oil or natural gas exploration or production platforms or vessels, and engines, accessories and spare parts for such aircraft.

(d) Sales to commercial fishermen of commercial fishing boats of over five (5) tons load displacement and not more than fifty (50) tons load displacement as registered with the United States Coast Guard and licensed by the Mississippi Commission on Marine Resources.

(e) The gross income from repairs to vessels and barges engaged in foreign trade or interstate transportation.

(f) Sales of petroleum products to vessels or barges for consumption in marine international commerce or interstate transportation businesses.

(g) Sales and rentals of rail rolling stock (and component parts thereof) for ultimate use in interstate commerce and gross income from services with respect to manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof).

(h) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) used or consumed directly in manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof). This exemption shall not apply to any property used as fuel.

(i) Sales of machinery or tools or repair parts therefor or replacements thereof, fuel or supplies used directly in manufacturing, converting or repairing ships, vessels or barges of three thousand (3,000) tons load displacement and over, but not to include office and plant supplies or other equipment not directly used on the ship, vessel or barge being built, converted or repaired. For purposes of this exemption, "ships, vessels or barges" shall not include floating structures described in Section 27-65-18.

(j) Sales of tangible personal property to persons operating ships in international commerce for use or consumption on board such ships. This exemption shall be limited to cases in which procedures satisfactory to the commissioner, ensuring against use in this state other than on such ships, are established.

(k) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-51-5, which are located in a county or portion thereof designated as an enterprise zone pursuant to Sections 57-51-1 through 57-51-15.

(*l*) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-54-5.

(m) Income from storage and handling of perishable goods by a public storage warehouse.

(n) The value of natural gas lawfully injected into the earth for cycling, repressuring or lifting of oil, or lawfully vented or flared in connection with the production of oil; however, if any gas so injected into the earth is sold for such purposes, then the gas so sold shall not be exempt.

(o) The gross collections from self-service commercial laundering, drying, cleaning and pressing equipment.

(p) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified companies, certified as such by the Mississippi Development Authority under Section 57-53-1.

(q) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Three areas (as such term is defined in Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this paragraph (q).

(r)(i) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi and creating a minimum of twenty (20) jobs at the new headquarters in this state. The Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this subparagraph (i).

(ii) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company expanding or making additions after January 1, 2013, to its national or regional headquarters within the State of Mississippi and creating a minimum of twenty (20) new jobs at the headquarters as a result of the expansion or additions. The Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this subparagraph (ii).

(s) The gross proceeds from the sale of semitrailers, trailers, boats, travel trailers, motorcycles, all-terrain cycles and rotary-wing aircraft if exported from this state within forty-eight (48) hours and registered and first used in another state.

(t) Gross income from the storage and handling of natural gas in underground salt domes and in other underground reservoirs, caverns, structures and formations suitable for such storage.

(u) Sales of machinery and equipment to nonprofit organizations if the organization:

(i) Is tax exempt pursuant to Section 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(ii) Assists in the implementation of the contingency plan or area contingency plan, and which is created in response to the requirements of Title IV, Subtitle B of the Oil Pollution Act of 1990, Public Law 101-380; and

(iii) Engages primarily in programs to contain, clean up and otherwise mitigate spills of oil or other substances occurring in the United States coastal and tidal waters.

For purposes of this exemption, "machinery and equipment" means any ocean-going vessels, barges, booms, skimmers and other capital equipment used primarily in the operations of nonprofit organizations referred to herein.

(v) Sales or leases of materials and equipment to approved business enterprises as provided under the Growth and Prosperity Act.

(w) From and after July 1, 2001, sales of pollution control equipment to manufacturers or custom processors for industrial use. For the purposes of this exemption, "pollution control equipment" means equipment, devices, machinery or systems used or acquired to prevent, control, monitor or reduce air, water or groundwater pollution, or solid or hazardous waste as required by federal or state law or regulation.

(x) Sales or leases to a manufacturer of motor vehicles or powertrain components operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi) or Section 57-75-5(f)(xxii) of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal and natural gas used directly in the manufacture of motor vehicles or motor vehicle parts or used to provide climate control for manufacturing areas.

(y) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement thereon to an enterprise operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi), Section 57-75-5(f)(xxii) or Section 57-75-5(f)(xxviii) and any other sales or leases required to establish or operate such project.

(z) Sales of component materials and equipment to a business enterprise as provided under Section 57-64-33.

(aa) The gross income from the stripping and painting of commercial aircraft engaged in foreign or interstate transportation business.

(bb) [Repealed]

(cc) Sales or leases to an enterprise owning or operating a project that has been designated by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xviii) of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal and natural gas used directly in the manufacturing/production operations of the project or used to provide climate control for manufacturing/production areas.

(dd) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement

thereon to an enterprise owning or operating a project that has been designated by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xviii) and any other sales or leases required to establish or operate such project.

(ee) Sales of parts used in the repair and servicing of aircraft not registered in Mississippi engaged exclusively in the business of foreign or interstate transportation to businesses engaged in aircraft repair and maintenance.

(ff) Sales of component materials used in the construction of a facility, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to a permanent business enterprise operating a data/information enterprise in Tier Three areas (as such areas are designated in accordance with Section 57-73-21), meeting minimum criteria established by the Mississippi Development Authority.

(gg) Sales of component materials used in the construction of a facility, or any addition or improvement thereto, and sales of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the facility or any addition or improvement thereto, to technology intensive enterprises for industrial purposes in Tier Three areas (as such areas are designated in accordance with Section 57-73-21), as certified by the Department of Revenue. For purposes of this paragraph, an enterprise must meet the criteria provided for in Section 27-65-17(1)(f) in order to be considered a technology intensive enterprise.

(hh) Sales of component materials used in the replacement, reconstruction or repair of a building or facility that has been destroyed or sustained extensive damage as a result of a disaster declared by the Governor, sales of machinery and equipment to be used therein to replace machinery or equipment damaged or destroyed as a result of such disaster, including, but not limited to, manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, to enterprises or companies that were eligible for the exemptions authorized in paragraph (q), (r), (ff) or (gg) of this subsection during initial construction of the building that was destroyed or damaged, which enterprises or companies are certified by the Department of Revenue as being eligible for the exemption granted in this paragraph.

(ii) Sales of software or software services transmitted by the Internet to a destination outside the State of Mississippi where the first use of such software or software services by the purchaser occurs outside the State of Mississippi.

(jj) Gross income of public storage warehouses derived from the temporary storage of raw materials that are to be used in an eligible facility as defined in Section 27-7-22.35.

(kk) Sales of component building materials and equipment for initial construction of facilities or expansion of facilities as authorized under Sections 57-113-1 through 57-113-7 and Sections 57-113-21 through 57-113-27.

(*ll*) Sales and leases of machinery and equipment acquired in the initial construction to establish facilities as authorized in Sections 57-113-1 through 57-113-7.

(mm) Sales and leases of replacement hardware, software or other necessary technology to operate a data center as authorized under Sections 57-113-21 through 57-113-27.

(nn) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of the construction of the facility, to be used in the facility, to permanent business enterprises operating a facility producing renewable crude oil from biomass harvested or produced, in whole or in part, in Mississippi, which businesses meet minimum criteria established by the Mississippi Development Authority. As used in this paragraph, the term "biomass" shall have the meaning ascribed to such term in Section 57-113-1.

(oo) Sales of supplies, equipment and other personal property to an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is the host organization coordinating a professional golf tournament played or to be played in this state and the supplies, equipment or other personal property will be used for purposes related to the golf tournament and related activities.

(pp) Sales of materials used in the construction of a health care industry facility, as defined in Section 57-117-3, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-117-3. This paragraph shall be repealed from and after July 1, 2022.

(qq) Sales or leases to a manufacturer of automotive parts operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxviii) of machinery and equipment; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal, nitrogen and natural gas used directly in the manufacture of automotive parts or used to provide climate control for manufacturing areas.

(rr) Gross collections derived from guided tours on any navigable waters of this state, which include providing accommodations, guide services and/or related equipment operated by or under the direction of the person providing the tour, for the purposes of outdoor tourism. The exemption provided in this paragraph (rr) does not apply to the sale of tangible personal property by a person providing such tours.

(ss) Retail sales of truck-tractors and semitrailers used in interstate commerce and registered under the International Registration Plan (IRP) or

any similar reciprocity agreement or compact relating to the proportional registration of commercial vehicles entered into as provided for in Section 27-19-143.

(tt) Sales exempt under the Facilitating Business Rapid Response to State Declared Disasters Act of 2015 (Sections 27-113-1 through 27-113-9).

(uu) Sales or leases to an enterprise and its affiliates operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxix) of:

(i) All personal property and fixtures, including without limitation, sales or leases to the enterprise and its affiliates of:

1. Manufacturing machinery and equipment;

2. Special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes;

3. Component building materials, machinery and equipment used in the construction of buildings, and any other additions or improvements to the project site for the project;

4. Nonmanufacturing furniture, fixtures and equipment (inclusive of all communications, computer, server, software and other hardware equipment); and

5. Fuel, supplies (other than nonmanufacturing consumable supplies and water), electricity, nitrogen gas and natural gas used directly in the manufacturing/production operations of such project or used to provide climate control for manufacturing/production areas of such project;

(ii) All replacements of, repair parts for or services to repair items described in subparagraph (i)1, 2 and 3 of this paragraph; and

(iii) All services taxable pursuant to Section 27-65-23 required to establish, support, operate, repair and/or maintain such project.

(vv) Sales or leases to an enterprise operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxx) of:

(i) Purchases required to establish and operate the project, including, but not limited to, sales of component building materials, machinery and equipment required to establish the project facility and any additions or improvements thereon; and

(ii) Machinery, special tools (such as dies, molds, and jigs) or repair parts thereof, or replacements and lease thereof, repair services thereon, fuel, supplies and electricity, coal and natural gas used in the manufacturing process and purchased by the enterprise owning or operating the project for the benefit of the project.

(ww) Sales of component materials used in the construction of a building, or any expansion or improvement thereon, sales of machinery and/or equipment to be used therein, and sales of processing machinery and equipment which is permanently attached to the ground or to a permanent foundation which is not by its nature intended to be housed in a building structure, no later than three (3) months after initial startup, expansion or

improvement of a permanent enterprise solely engaged in the conversion of natural sand into proppants used in oil and gas exploration and development with at least ninety-five percent (95%) of such proppants used in the production of oil and/or gas from horizontally drilled wells and/or horizontally drilled recompletion wells as defined in Sections 27-25-501 and 27-25-701.

(2) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this subsection, shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter.

(3) Sales of component materials used in the construction of a facility, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to a permanent business enterprise operating a data/information enterprise in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses meet minimum criteria established by the Mississippi Development Authority, shall be exempt from one-half (1/2) of the taxes imposed on such transaction under this chapter.

(4) Sales of component materials used in the construction of a facility, or any addition or improvement thereto, and sales of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to technology intensive enterprises for industrial purposes in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this subsection, shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter. For purposes of this subsection, an enterprise must meet the criteria provided for in Section 27-65-17(1)(f) in order to be considered a technology intensive enterprise.

(5)(a) For purposes of this subsection:

(i) "Telecommunications enterprises" shall have the meaning ascribed to such term in Section 57-73-21;

(ii) "Tier One areas" mean counties designated as Tier One areas pursuant to Section 57-73-21;

(iii) "Tier Two areas" mean counties designated as Tier Two areas pursuant to Section 57-73-21;

(iv) "Tier Three areas" mean counties designated as Tier Three areas pursuant to Section 57-73-21; and

(v) "Equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than three hundred eighty-four (384) kilobits per second in at least one (1) direction, including, but not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment.

(b) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2025, that is installed in Tier One areas and used in the deployment of broadband technologies shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter.

(c) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2025, that is installed in Tier Two and Tier Three areas and used in the deployment of broadband technologies shall be exempt from the taxes imposed on such transactions under this chapter.

(6) Sales of component materials used in the replacement, reconstruction or repair of a building that has been destroyed or sustained extensive damage as a result of a disaster declared by the Governor, sales of machinery and equipment to be used therein to replace machinery or equipment damaged or destroyed as a result of such disaster, including, but not limited to, manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, to enterprises that were eligible for the partial exemptions provided for in subsections (2), (3) and (4) of this section during initial construction of the building that was destroyed or damaged, which enterprises are certified by the Department of Revenue as being eligible for the partial exemption granted in this subsection, shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter.

HISTORY: Laws, 1978, ch. 347, § 3; Laws, 1980, ch. 500, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 41; Laws, 1983, ch. 475, § 10, ch. 491, § 10, ch. 546, § 3; Laws, 1984, ch. 381, § 7; Laws, 1984, ch. 458, § 6; Laws, 1985, ch. 516, § 3; Laws, 1986, ch. 410, § 3; Laws, 1987, ch. 454, § 1; Laws, 1989, ch. 524, § 20; Laws, 1990, ch. 525, § 1; Laws, 1992, ch. 462, § 2; Laws, 1992, ch. 548 § 2; Laws, 1994, ch. 510, § 1; Laws, 1998, ch. 526, § 1; Laws, 1999, ch. 450, § 2; Laws, 2000, ch. 516, § 5; Laws, 2000, 2nd Ex Sess, ch. 1, § 51; Laws, 2000, 3rd Ex Sess, ch. 1, § 14; Laws, 2002, ch. 464, § 8; Laws, 2003, ch. 464, § 1; Laws, 2003, ch. 520, § 5; Laws, 2004, ch. 469, § 2; Laws, 2004, ch. 528, § 6; Laws, 2005, ch. 315, § 4; Laws, 2005, ch. 486, § 2; Laws, 2005, 3rd Ex Sess, ch. 1 § 65; Laws, 2007, ch. 303, § 15; Laws, 2007, ch. 503, § 1; Laws, 2007, 1st Ex Sess, ch. 1, § 12; Laws, 2008, ch. 439, § 1; Laws, 2009, ch. 512, § 2; Laws, 2010, ch. 533, § 23; Laws, 2010, 2nd Ex Sess, ch. 30, § 5; Laws, 2011, ch. 453, § 3; Laws, 2012, ch. 520, § 9; Laws, 2013, ch. 462, § 1; Laws, 2013, ch. 571, § 1; Laws, 2013, 1st Ex Sess, ch. 1, § 10; Laws, 2014, ch. 429, § 1; Laws, 2014, ch. 505, § 1; Laws, 2014, ch. 528, § 2; Laws, 2015, ch. 420, § 12; Laws, 2016, 1st Ex Sess, ch. 1, § 13; Laws, 2017, ch. 413, § 2, eff from and after July 1, 2017; Laws,

2018, ch. 389, § 1, eff from and after July 1, 2018; Laws, 2020, ch. 453, § 5, eff from and after July 1, 2020.

Editor's Notes — Laws of 2018, ch. 389, § 2, effective July 1, 2018, provides: "SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2020, ch. 453, §§ 8 and 9, effective July 1, 2020, provide:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"SECTION 9. Sections 2 and 3 of this act shall take effect and be in force from and after January 1, 2020, and the remaining sections of this act shall take effect and be in force from and after July 1, 2020."

Amendment Notes — The 2018 amendment, in (1)(s), inserted "and rotary-wing aircraft" and made a related change.

The 2020 amendment, in (5)(b) and (c), substituted "July 1, 2025" for "July 1, 2020."

§ 27-65-107. Exemptions; utility.

The exemptions from the provisions of this chapter which relate to utilities or which are more properly classified as utility exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No utility exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent utility exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales and rentals of locomotives, rail rolling stock and materials for their repair, locomotive water, when made to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission.

(b) Rentals of manufacturing machinery to a manufacturer or custom processor where such manufacturer or custom processor is engaged in, and such machinery is used in, the manufacture of containers made from timber or wood for sale. The tax, likewise, shall not apply to replacement or repair parts of such machinery used in such manufacture.

(c) Sales of tangible personal property and services to nonprofit water associations or corporations in which no part of the net earnings inures to the benefit of any private shareholder, group or individual. Only sales of property or services which are ordinary and necessary to the operation of such organizations are exempt from tax.

(d) Wholesale sales of tangible personal property for resale under Section 27-65-19.

(e) From and after July 1, 2003, sales of fuel used to produce electric power by a company primarily engaged in the business of producing, generating or distributing electric power for sale.

(f) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a manufacturer, custom processor, data center meeting the criteria provided for in Section 57-113-21, technology intensive enterprise meeting the criteria provided for in Section 27-65-17(1)(f), or public service company for industrial purposes, which shall include that used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressor or pumping stations, or to operate railroad locomotives.

(g) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a producer or processor for use directly in the production of poultry or poultry products, the production of livestock and livestock products, the production of domesticated fish and domesticated fish products, the production of marine aquaculture products, the production of plants or food by commercial horticulturists, the processing of milk and milk products, the processing of poultry and livestock feed, and the irrigation of farm crops.

(h) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a commercial fisherman, shrimper or oysterman.

(i) Sales exempt under the Facilitating Business Rapid Response to State Declared Disasters Act of 2015 (Sections 27-113-1 through 27-113-9).

(j) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a permanent enterprise that is eligible for the exemption authorized in Section 27-65-101(1)(ww) upon completion of the expansion upon which such exemption is based; however, in order to be eligible for the exemption authorized by this paragraph, the expansion must:

(i) Create at least eighty-five (85) full-time jobs in this state with an average annual wage of at least Sixty Thousand Dollars ($60,000.00); and

(ii) Have at least Eighty Million Dollars ($80,000,000.00) in new investment at the existing facility.

HISTORY: Laws, 1978, ch. 347, § 6; Laws, 1979, ch. 302, § 8; Laws, 1988, ch. 515, § 38; Laws, 1995, ch. 508, § 5; Laws, 1997, ch. 536, § 3; Laws, 2013, ch. 537, § 1; Laws, 2015, ch. 420, § 13; Laws, 2017, ch. 413, § 3, eff from and after July 1, 2017; Laws, 2019, ch. 396, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "data center meeting the criteria provided for in Section 57-113-21" in (f).

§ 27-65-111. Exemptions; others.

The exemptions from the provisions of this chapter which are not industrial, agricultural or governmental, or which do not relate to utilities or taxes, or which are not properly classified as one (1) of the exemption classifications of this chapter, shall be confined to persons or property exempted by this section or by the Constitution of the United States or the State of Mississippi. No exemptions as now provided by any other section, except the classified exemption sections of this chapter set forth herein, shall be valid as against the tax herein levied. Any subsequent exemption from the tax levied hereunder, except as indicated above, shall be provided by amendments to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales of tangible personal property and services to hospitals or infirmaries owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are subject to and governed by Sections 41-7-123 through 41-7-127.

Only sales of tangible personal property or services which are ordinary and necessary to the operation of such hospitals and infirmaries are exempted from tax.

(b) Sales of daily or weekly newspapers, and periodicals or publications of scientific, literary or educational organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as it exists as of March 31, 1975, and subscription sales of all magazines.

(c) Sales of coffins, caskets and other materials used in the preparation of human bodies for burial.

(d) Sales of tangible personal property for immediate export to a foreign country.

(e) Sales of tangible personal property to an orphanage, old men's or ladies' home, supported wholly or in part by a religious denomination, fraternal nonprofit organization or other nonprofit organization.

(f) Sales of tangible personal property, labor or services taxable under Sections 27-65-17, 27-65-19 and 27-65-23, to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual.

(g) Sales to elementary and secondary grade schools, junior and senior colleges owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are exempt from state income taxation, provided that this exemption does not apply to sales of property or services which are not to be used in the ordinary operation of the school, or which are to be resold to the students or the public.

(h) The gross proceeds of retail sales and the use or consumption in this state of drugs and medicines:

(i) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed or prescription filled by a registered pharmacist in accordance with law; or

(ii) Furnished by a licensed physician, surgeon, dentist or podiatrist to his own patient for treatment of the patient; or

(iii) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, dentist or podiatrist; or

(iv) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being; or

(v) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

"Medicines," as used in this paragraph (h), shall mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use; provided that "medicines" do not include any auditory, prosthetic, ophthalmic or ocular device or appliance, any dentures or parts thereof or any artificial limbs or their replacement parts, articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof, or any alcoholic beverage or any other drug or medicine not commonly referred to as a prescription drug.

Notwithstanding the preceding sentence of this paragraph (h), "medicines" as used in this paragraph (h), shall mean and include sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve in the body.

"Hospital," as used in this paragraph (h), shall have the meaning ascribed to it in Section 41-9-3, Mississippi Code of 1972.

Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this paragraph (h).

(i) Retail sales of automobiles, trucks and truck-tractors if exported from this state within forty-eight (48) hours and registered and first used in another state.

(j) Sales of tangible personal property or services to the Salvation Army and the Muscular Dystrophy Association, Inc.

(k) From July 1, 1985, through December 31, 1992, retail sales of "alcohol blended fuel" as such term is defined in Section 75-55-5. The

gasoline-alcohol blend or the straight alcohol eligible for this exemption shall not contain alcohol distilled outside the State of Mississippi.

(*l*) Sales of tangible personal property or services to the Institute for Technology Development.

(m) The gross proceeds of retail sales of food and drink for human consumption made through vending machines serviced by full line vendors from and not connected with other taxable businesses.

(n) The gross proceeds of sales of motor fuel.

(o) Retail sales of food for human consumption purchased with food stamps issued by the United States Department of Agriculture, or other federal agency, from and after October 1, 1987, or from and after the expiration of any waiver granted pursuant to federal law, the effect of which waiver is to permit the collection by the state of tax on such retail sales of food for human consumption purchased with food stamps.

(p) Sales of cookies for human consumption by the Girl Scouts of America no part of the net earnings from which sales inures to the benefit of any private group or individual.

(q) Gifts or sales of tangible personal property or services to public or private nonprofit museums of art.

(r) Sales of tangible personal property or services to alumni associations of state-supported colleges or universities.

(s) Sales of tangible personal property or services to National Association of Junior Auxiliaries, Inc., and chapters of the National Association of Junior Auxiliaries, Inc.

(t) Sales of tangible personal property or services to domestic violence shelters which qualify for state funding under Sections 93-21-101 through 93-21-113.

(u) Sales of tangible personal property or services to the National Multiple Sclerosis Society, Mississippi Chapter.

(v) Retail sales of food for human consumption purchased with food instruments issued the Mississippi Band of Choctaw Indians under the Women, Infants and Children Program (WIC) funded by the United States Department of Agriculture.

(w) Sales of tangible personal property or services to a private company, as defined in Section 57-61-5, which is making such purchases with proceeds of bonds issued under Section 57-61-1 et seq., the Mississippi Business Investment Act.

(x) The gross collections from the operation of self-service, coin-operated car washing equipment and sales of the service of washing motor vehicles with portable high-pressure washing equipment on the premises of the customer.

(y) Sales of tangible personal property or services to the Mississippi Technology Alliance.

(z) Sales of tangible personal property to nonprofit organizations that provide foster care, adoption services and temporary housing for unwed mothers and their children if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(aa) Sales of tangible personal property to nonprofit organizations that provide residential rehabilitation for persons with alcohol and drug dependencies if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(bb)(i) Retail sales of an article of clothing or footwear designed to be worn on or about the human body and retail sales of school supplies if the sales price of the article of clothing or footwear or school supply is less than One Hundred Dollars ($100.00) and the sale takes place during a period beginning at 12:01 a.m. on the last Friday in July and ending at 12:00 midnight the following Saturday. This paragraph (bb) shall not apply to:

1. Accessories including jewelry, handbags, luggage, umbrellas, wallets, watches, briefcases, garment bags and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

2. The rental of clothing or footwear; and

3. Skis, swim fins, roller blades, skates and similar items worn on the foot.

(ii) For purposes of this paragraph (bb), "school supplies" means items that are commonly used by a student in a course of study. The following is an all-inclusive list:

1. Backpacks;
2. Binder pockets;
3. Binders;
4. Blackboard chalk;
5. Book bags;
6. Calculators;
7. Cellophane tape;
8. Clays and glazes;
9. Compasses;
10. Composition books;
11. Crayons;
12. Dictionaries and thesauruses;
13. Dividers;
14. Erasers;
15. Folders: expandable, pocket, plastic and manila;
16. Glue, paste and paste sticks;
17. Highlighters;
18. Index card boxes;
19. Index cards;
20. Legal pads;
21. Lunch boxes;
22. Markers;
23. Notebooks;
24. Paintbrushes for artwork;
25. Paints: acrylic, tempera and oil;
26. Paper: loose-leaf ruled notebook paper, copy paper, graph paper,

tracing paper, manila paper, colored paper, poster board and construction paper;

27. Pencil boxes and other school supply boxes;
28. Pencil sharpeners;
29. Pencils;
30. Pens;
31. Protractors;
32. Reference books;
33. Reference maps and globes;
34. Rulers;
35. Scissors;
36. Sheet music;
37. Sketch and drawing pads;
38. Textbooks;
39. Watercolors;
40. Workbooks; and
41. Writing tablets.

(iii) From and after January 1, 2010, the governing authorities of a municipality, for retail sales occurring within the corporate limits of the municipality, may suspend the application of the exemption provided for in this paragraph (bb) by adoption of a resolution to that effect stating the date upon which the suspension shall take effect. A certified copy of the resolution shall be furnished to the Department of Revenue at least ninety (90) days prior to the date upon which the municipality desires such suspension to take effect.

(cc) The gross proceeds of sales of tangible personal property made for the sole purpose of raising funds for a school or an organization affiliated with a school.

As used in this paragraph (cc), "school" means any public or private school that teaches courses of instruction to students in any grade from kindergarten through Grade 12.

(dd) Sales of durable medical equipment and home medical supplies when ordered or prescribed by a licensed physician for medical purposes of a patient. As used in this paragraph (dd), "durable medical equipment" and "home medical supplies" mean equipment, including repair and replacement parts for the equipment or supplies listed under Title XVIII of the Social Security Act or under the state plan for medical assistance under Title XIX of the Social Security Act, prosthetics, orthotics, hearing aids, hearing devices, prescription eyeglasses, oxygen and oxygen equipment. Payment does not have to be made, in whole or in part, by any particular person to be eligible for this exemption. Purchases of home medical equipment and supplies by a provider of home health services or a provider of hospice services are eligible for this exemption if the purchases otherwise meet the requirements of this paragraph.

(ee) Sales of tangible personal property or services to Mississippi Blood Services.

(ff)(i) Subject to the provisions of this paragraph (ff), retail sales of firearms, ammunition and hunting supplies if sold during the annual Mississippi Second Amendment Weekend holiday beginning at 12:01 a.m. on the last Friday in August and ending at 12:00 midnight the following Sunday. For the purposes of this paragraph (ff), "hunting supplies" means tangible personal property used for hunting, including, and limited to, archery equipment, firearm and archery cases, firearm and archery accessories, hearing protection, holsters, belts and slings. Hunting supplies does not include animals used for hunting.

(ii) This paragraph (ff) shall apply only if one or more of the following occur:

1. Title to and/or possession of an eligible item is transferred from a seller to a purchaser; and/or

2. A purchaser orders and pays for an eligible item and the seller accepts the order for immediate shipment, even if delivery is made after the time period provided in subparagraph (i) of this paragraph (ff), provided that the purchaser has not requested or caused the delay in shipment.

(gg) Sales of nonperishable food items to charitable organizations that are exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and operate a food bank or food pantry or food lines.

(hh) Sales of tangible personal property or services to the United Way of the Pine Belt Region, Inc.

(ii) Sales of tangible personal property or services to the Mississippi Children's Museum or any subsidiary or affiliate thereof operating a satellite or branch museum within this state.

(jj) Sales of tangible personal property or services to the Jackson Zoological Park.

(kk) Sales of tangible personal property or services to the Hattiesburg Zoo.

(*ll*) Gross proceeds from sales of food, merchandise or other concessions at an event held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds for the grant program authorized under Section 18, Chapter 530, Laws of 1995.

(mm) Sales of tangible personal property and services to the Diabetes Foundation of Mississippi and the Mississippi Chapter of the Juvenile Diabetes Research Foundation.

(nn) Sales of potting soil, mulch, or other soil amendments used in growing ornamental plants which bear no fruit of commercial value when sold to commercial plant nurseries that operate exclusively at wholesale and where no retail sales can be made.

(oo) Sales of tangible personal property or services to the University of Mississippi Medical Center Research Development Foundation.

(pp) Sales of tangible personal property or services to Keep Mississippi Beautiful, Inc., and all affiliates of Keep Mississippi Beautiful, Inc.

(qq) Sales of tangible personal property or services to the Friends of Children's Hospital.

(rr) Sales of tangible personal property or services to the Pinecrest Weekend Snackpacks for Kids located in Corinth, Mississippi.

(ss) Sales of hearing aids when ordered or prescribed by a licensed physician, audiologist or hearing aid specialist for the medical purposes of a patient.

(tt) Sales exempt under the Facilitating Business Rapid Response to State Declared Disasters Act of 2015 (Sections 27-113-1 through 27-113-9).

(uu) Sales of tangible personal property or services to the Junior League of Jackson.

(vv) Sales of tangible personal property or services to the Mississippi's Toughest Kids Foundation for use in the construction, furnishing and equipping of buildings and related facilities and infrastructure at Camp Kamassa in Copiah County, Mississippi. This paragraph (vv) shall stand repealed on July 1, 2022.

(ww) Sales of tangible personal property or services to MS Gulf Coast Buddy Sports, Inc.

(xx) Sales of tangible personal property or services to Biloxi Lions, Inc.

(yy) Sales of tangible personal property or services to Lions Sight Foundation of Mississippi, Inc.

(zz) Sales of tangible personal property and services to the Goldring/ Woldenberg Institute of Southern Jewish Life (ISJL).

HISTORY: Laws, 1978, ch. 347, § 8; Laws, 1979, ch. 302, § 9; Laws, 1980, ch. 536, § 1; Laws, 1984, ch. 452, § 1; Laws, 1985, ch. 439; Laws, 1985, ch. 516, § 4; Laws, 1987, ch. 322, § 27; Laws, 1987, ch. 454, § 3; Laws, 1993, ch. 548, § 13; Laws, 1995, ch. 542, § 1; Laws, 2004, ch. 494, § 2; Laws, 2006, ch. 536, § 1; Laws, 2009, ch. 480, § 1; Laws, 2013, ch. 498, § 2; Laws, 2014, ch. 475, § 1; Laws, 2014, ch. 529, § 2; Laws, 2014, ch. 530, § 43; Laws, 2015, ch. 420, § 14; Laws, 2015, ch. 439, § 1; Laws, 2016, ch. 485, § 1, eff from and after July 1, 2016; Laws, 2019, ch. 478, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (bb), designated the former introductory paragraph (i), and therein inserted "and retail sales of school supplies" and "of clothing or footwear or school supply," redesignated former (i) as 1, and therein deleted "backpacks" following "watches," redesignated former (ii) and (iii) as 2 and 3, added (ii), and designated the former last undesignated paragraph (iii); and added (uu) through (zz).

TAX ON SALE OF MOTOR VEHICLE BY INDIVIDUAL

Sec.
27-65-201. Tax upon sale or use of motor vehicles.

§ 27-65-201. Tax upon sale or use of motor vehicles.

(1) For the purposes of this section, unless the context otherwise requires, the term "motor vehicle" means a motor vehicle required to be registered or licensed by the county tax collectors pursuant to Section 27-19-43.

(2) Upon every person, firm or corporation purchasing other than at wholesale within this state any motor vehicle required to be registered or licensed with the tax collector of any county in this state from any person, firm or corporation which is not a licensed dealer engaged in selling motor vehicles, there shall be levied and collected a sales tax at the rate of five percent (5%) of the true value of the motor vehicle as calculated by using the most current official motor vehicle assessment schedule supplied by the Department of Revenue.

(3) Upon every person, firm or corporation purchasing other than at wholesale outside the state any motor vehicle required to be registered or licensed with the tax collector of any county in this state from any person, firm or corporation which is not a licensed dealer engaged in selling motor vehicles, for use, storage or other consumption within this state there is levied a use tax at the rate of five percent (5%) of the true value of the motor vehicle as calculated by using the most current official motor vehicle assessment schedule supplied by the Department of Revenue.

(4) Where any motor vehicle is taken in trade as a credit or part payment on the sale of a motor vehicle taxable under this section, the tax levied by this section shall be paid on the net difference, that is, the true value of the motor vehicle sold less the credit for the motor vehicle taken in trade.

(5) The tax levied by this section shall be collected by the tax collector at the time of, and as a prerequisite to, the registration of or licensing of any such motor vehicle. The tax collector shall give to the person registering the vehicle a receipt in a form prescribed and furnished by the Department of Revenue for the amount of tax collected.

(6) County tax collectors shall be liable for the tax they are required to collect, and taxes which are in fact collected, under this section and failure to properly collect or maintain proper records shall not relieve them of liability for payment to the Department of Revenue. Deficiencies in collection or payment shall be assessed against the tax collector, or his successor, in the same manner and subject to the same penalties and provisions for appeal as are deficiencies assessed against taxpayers under Chapter 65, Title 27, Mississippi Code of 1972.

Each tax collector of the several counties shall, on or before the twentieth day of each month, file a report with and pay to the Department of Revenue all funds collected under the provisions of this section, less a commission of three percent (3%) which shall be retained by the tax collector as a commission for collecting such tax, and such commission shall be deposited in the county general fund. The report required to be filed shall cover all collections made during the calendar month next preceding the date on which the report is due and filed.

Any error in the report and remittance to the Department of Revenue may be adjusted on a subsequent report. If the error was in the collection by the tax collector, it shall be adjusted through the tax collector with the taxpayer before credit is allowed by the Department of Revenue.

All information relating to the collection of this tax by tax collectors and such records as the Department of Revenue may require shall be preserved in

the tax collector's office for a period of three (3) years for audit by the Department of Revenue.

(7) The tax levied by this section shall not apply to the following:

(a) Transfers of legal ownership of motor vehicles currently registered or licensed in the transferor's name between husband and wife, parent and child, or grandparents and grandchildren, unless the transferor is a licensed dealer of motor vehicles and the transfer of the motor vehicle is made in the regular course of business.

(b) Transfers of legal ownership of motor vehicles pursuant to a will or pursuant to any law providing for the distribution of the property of one dying intestate.

(c) Transfers of legal ownership of motor vehicles ten (10) or more years after the date of the manufacture of such vehicle.

(d) Transfers of legal ownership of motor vehicles between siblings, unless the transferor is a licensed dealer of motor vehicles and the transfer of the motor vehicle is made in the regular course of business.

HISTORY: Laws, 1985, ch. 351, § 27; Laws, 1986, ch. 318; Laws, 2005, ch. 487, § 1; Laws, 2009, ch. 562, § 5, eff from and after July 1, 2009; Laws, 2019, ch. 389, § 1, eff from and after July 1, 2019.

Editor's Notes — Laws of 2019, ch. 389, § 2, effective July 1, 2019, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2019 amendment substituted "Department of Revenue" for "State Tax Commission" everywhere it appears; and added (7)(d).

MUNICIPAL SPECIAL SALES TAX

Sec.

27-65-241. Certain municipalities authorized to impose special sales tax on persons engaging in business in municipality; exemptions; voter approval required before levying tax; authorized use of tax proceeds; establishment of commission; expenditure of special tax revenue to be in accordance with master plan; establishment of master plan [Repealed effective July 1, 2035].

§ 27-65-241. Certain municipalities authorized to impose special sales tax on persons engaging in business in municipality; exemptions; voter approval required before levying tax; authorized use of tax proceeds; establishment of commission; expenditure of special tax revenue to be in accordance with master plan; establishment of master plan [Repealed effective July 1, 2035].

(1) As used in this section, the following terms shall have the meanings ascribed to them in this section unless otherwise clearly indicated by the context in which they are used:

(a) "Hotel" or "motel" means and includes a place of lodging that at any one time will accommodate transient guests on a daily or weekly basis and that is known to the trade as such. Such terms shall not include a place of lodging with ten (10) or less rental units.

(b) "Municipality" means any municipality in the State of Mississippi with a population of one hundred fifty thousand (150,000) or more according to the most recent federal decennial census.

(c) "Restaurant" means and includes all places where prepared food is sold and whose annual gross proceeds of sales or gross income for the preceding calendar year equals or exceeds One Hundred Thousand Dollars ($100,000.00). The term "restaurant" shall not include any nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. For the purpose of calculating gross proceeds of sales or gross income, the sales or income of all establishments owned, operated or controlled by the same person, persons or corporation shall be aggregated.

(2)(a) Subject to the provisions of this section, the governing authorities of a municipality may impose upon all persons as a privilege for engaging or continuing in business or doing business within such municipality, a special sales tax at the rate of not more than one percent (1%) of the gross proceeds of sales or gross income of the business, as the case may be, derived from any of the activities taxed at the rate of seven percent (7%) or more under the Mississippi Sales Tax Law, Section 27-65-1 et seq.

(b) The tax levied under this section shall apply to every person making sales of tangible personal property or services within the municipality but shall not apply to:

(i) Sales exempted by Sections 27-65-19, 27-65-101, 27-65-103, 27-65-105, 27-65-107, 27-65-109 and 27-65-111 of the Mississippi Sales Tax Law;

(ii) Gross proceeds of sales or gross income of restaurants derived from the sale of food and beverages;

(iii) Gross proceeds of sales or gross income of hotels and motels derived from the sale of hotel rooms and motel rooms for lodging purposes;

(iv) Retail sales of food for human consumption not purchased with food stamps issued by the United States Department of Agriculture, or

other federal agency, but which would be exempt under Section 27-65-111(o) from the taxes imposed by this chapter if the food items were purchased with food stamps;

(v) Gross income of businesses engaging or continuing in the business of TV cable systems, subscription TV services, and other similar activities, including, but not limited to, cable Internet services;

(vi) Wholesale sales of food and drink for human consumption sold to full service vending machine operators; and

(vii) Wholesale sales of light wine, light spirit product, beer and alcoholic beverages.

(3)(a) Before any tax authorized under this section may be imposed, the governing authorities of the municipality shall adopt a resolution declaring its intention to levy the tax, setting forth the amount of the tax to be imposed, the purposes for which the revenue collected pursuant to the tax levy may be used and expended, the date upon which the tax shall become effective, the date upon which the tax shall be repealed, and calling for an election to be held on the question. The date of the election shall be set in the resolution. Notice of the election shall be published once each week for at least three (3) consecutive weeks in a newspaper published or having a general circulation in the municipality, with the first publication of the notice to be made not less than twenty-one (21) days before the date fixed in the resolution for the election and the last publication to be made not more than seven (7) days before the election. At the election, all qualified electors of the municipality may vote. The ballots used at the election shall have printed thereon a brief description of the sales tax, the amount of the sales tax levy, a description of the purposes for which the tax revenue may be used and expended and the words "FOR THE LOCAL SALES TAX" and "AGAINST THE LOCAL SALES TAX" and the voter shall vote by placing a cross (X) or check mark (√) opposite his choice on the proposition. When the results of the election have been canvassed by the election commissioners of the municipality and certified by them to the governing authorities, it shall be the duty of such governing authorities to determine and adjudicate whether at least three-fifths (3/5) of the qualified electors who voted in the election voted in favor of the tax. If at least three-fifths (3/5) of the qualified electors who voted in the election voted in favor of the tax, the governing authorities shall adopt a resolution declaring the levy and collection of the tax provided in this section and shall set the first day of the second month following the date of such adoption as the effective date of the tax levy. A certified copy of this resolution, together with the result of the election, shall be furnished to the Department of Revenue not less than thirty (30) days before the effective date of the levy.

(b) A municipality shall not hold more than two (2) elections under this subsection.

(4) The revenue collected pursuant to the tax levy imposed under this section may be expended to pay the cost of road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and to

pay the costs of water, sewer and drainage projects in accordance with a master plan adopted by the department established pursuant to subsection (7).

(5)(a) The special sales tax authorized by this section shall be collected by the Department of Revenue, shall be accounted for separately from the amount of sales tax collected for the state in the municipality and shall be paid to the municipality. The Department of Revenue may retain one percent (1%) of the proceeds of such tax for the purpose of defraying the costs incurred by the department in the collection of the tax. Payments to the municipality shall be made by the Department of Revenue on or before the fifteenth day of the month following the month in which the tax was collected.

(b) The proceeds of the special sales tax shall be placed into a special municipal fund apart from the municipal general fund and any other funds of the municipality, and shall be expended by the municipality solely for the purposes authorized in subsection (4) of this section. The records reflecting the receipts and expenditures of the revenue from the special sales tax shall be audited annually by an independent certified public accountant. The accountant shall make a report of his findings to the governing authorities of the municipality and file a copy of his report with the Secretary of the Senate and the Clerk of the House of Representatives. The audit shall be made and completed as soon as practical after the close of the fiscal year of the municipality, and expenses of the audit shall be paid from the funds derived by the municipality pursuant to this section.

(c) All provisions of the Mississippi Sales Tax Law applicable to filing of returns, discounts to the taxpayer, remittances to the Department of Revenue, enforced collection, rights of taxpayers, recovery of improper taxes, refunds of overpaid taxes or other provisions of law providing for imposition and collection of the state sales tax shall apply to the special sales tax authorized by this section, except where there is a conflict, in which case the provisions of this section shall control. Any damages, penalties or interest collected for the nonpayment of taxes imposed under this section, or for noncompliance with the provisions of this section, shall be paid to the municipality on the same basis and in the same manner as the tax proceeds. Any overpayment of tax for any reason that has been disbursed to a municipality or any payment of the tax to a municipality in error may be adjusted by the Department of Revenue on any subsequent payment to the municipality pursuant to the provisions of the Mississippi Sales Tax Law. The Department of Revenue may, from time to time, make such rules and regulations not inconsistent with this section as may be deemed necessary to carry out the provisions of this section, and such rules and regulations shall have the full force and effect of law.

(6) If a municipality expands its corporate boundaries, the governing authorities of the municipality may not impose the special sales tax in the annexed area unless the tax is approved at an election conducted, as far as is practicable, in the manner provided in subsection (3) of this section, except that only qualified electors in the annexed area may vote in the election.

(7)(a) Any municipality that levies the special sales tax authorized under this section shall establish a commission as provided for in this section. Expenditures of revenue from the special sales tax authorized by this section shall be in accordance with a master plan adopted by the commission pursuant to this subsection.

(b) The commission shall be composed of ten (10) voting members who shall be known as commissioners appointed as follows:

(i) Four (4) members representing the business community in the municipality appointed by the local chamber of commerce for initial terms of one (1), two (2), four (4) and five (5) years respectively. The members appointed pursuant to this paragraph shall be persons who represent businesses located within the city limits of the municipality.

(ii) Three (3) members shall be appointed at large by the mayor of the municipality, with the advice and consent of the legislative body of the municipality, for initial terms of two (2), three (3) and four (4) years respectively. All appointments made by the mayor pursuant to this paragraph shall be residents of the municipality.

(iii) One (1) member shall be appointed at large by the Governor for an initial term of four (4) years. All appointments made by the Governor pursuant to this paragraph shall be residents of the municipality.

(iv) One (1) member shall be appointed at large by the Lieutenant Governor for an initial term of four (4) years. All appointments made by the Lieutenant Governor pursuant to this paragraph shall be residents of the municipality.

(v) One (1) member shall be appointed at large by the Speaker of the House of Representatives for a term of four (4) years. All appointments made by the Speaker of the House of Representatives pursuant to this paragraph shall be residents of the municipality.

(c) The terms of all appointments made subsequent to the initial appointment shall be made for five (5) years. Any vacancy which may occur shall be filled in the same manner as the original appointment and shall be made for the unexpired term. Each member of the commission shall serve until his successor is appointed and qualified.

(d) The mayor of the municipality shall designate a chairman of the commission from among the membership of the commission. The vice chairman and secretary shall be elected by the commission from among the membership of the commission for a term of two (2) years. The vice chairman and secretary may be reelected, and the chairman may be reappointed.

(e) The commissioners shall serve without compensation.

(f) Any commissioner shall be disqualified and shall be removed from office for either of the following reasons:

(i) Conviction of a felony in any state court or in federal court; or

(ii) Failure to attend three (3) consecutive meetings without just cause.

If a commissioner is removed for any of the above reasons, the vacancy shall be filled in the manner prescribed in this section and shall be made for the unexpired term.

(g) A quorum shall consist of six (6) voting members of the commission. The commission shall adopt such rules and regulations as may govern the time and place for holding meetings, regular and special.

(h) The commission shall, with input from the municipality, establish a master plan for road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and for water, sewer and drainage projects. Expenditures of the revenue from the tax authorized to be imposed pursuant to this section shall be made at the discretion of the governing authorities of the municipality if the expenditures comply with the master plan. The commission shall monitor the compliance of the municipality with the master plan.

(8) The governing authorities of any municipality that levies the special sales tax authorized under this section are authorized to incur debt, including bonds, notes or other evidences of indebtedness, for the purpose of paying the costs of road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and to pay the costs of water, sewer and drainage projects in accordance with a master plan adopted by the commission established pursuant to subsection (7) of this section. Any bonds or notes issued to pay such costs may be secured by the proceeds of the special sales tax levied pursuant to this section or may be general obligations of the municipality and shall satisfy the requirements for the issuance of debt provided by Sections 21-33-313 through 21-33-323.

(9) This section shall stand repealed from and after July 1, 2035.

HISTORY: Laws, 2009, ch. 328, § 1; Laws, 2011, ch. 483, § 1; Laws, 2014, ch. 530, § 39, eff from and after passage (approved April 24, 2014.); Laws, 2020, ch. 314, § 47, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, in (2)(b)(vii), inserted "light spirit product"; and in (4), substituted "department" for "commission" near the end.

CHAPTER 67.

USE OR COMPENSATING TAXES

Article 1. Use Tax. 27-67-1

ARTICLE 1.

USE TAX

Sec.
27-67-3. Definitions.
27-67-11. Seller to collect tax from purchaser; collection of taxes by marketplace facilitator.
27-67-19. Extension of time; damages.
27-67-31. Administration of article by commissioner; monthly distribution of funds.

Sec.
27-67-35. Special fund created to assist municipalities and counties in paying for the repair, maintenance, reconstruction of roads, streets, bridges; distribution of funds.

§ 27-67-3. Definitions.

Whenever used in this article, the words, phrases and terms shall have the meaning ascribed to them as follows:

(a) "Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular in number. "Person" shall also include husband or wife, or both, where joint benefits are derived from the operation of a business taxed hereunder or where joint benefits are derived from the use of property taxed hereunder.

(d) "Taxpayer" means any person liable for the payment of any tax hereunder, or liable for the collection and payment of the tax.

(e) "Sale" or "purchase" means the exchange of properties for money or other consideration, and the barter of properties or products. Every closed transaction by which title to, or possession of, tangible personal property or specified digital products passes shall constitute a taxable event. A transaction whereby the possession of property or products is transferred but the seller retains title as security for payment of the selling price shall be deemed a sale.

(f) "Purchase price" or "sales price" means the total amount for which tangible personal property or specified digital product is purchased or sold, valued in money, including installation and service charges, and freight charges to the point of use within this state, without any deduction for cost of property or products sold, expenses or losses, or taxes of any kind except those exempt by the sales tax law. "Purchase price" or "sales price" shall not include cash discounts allowed and taken or merchandise returned by customers when the total sales price is refunded either in cash or by credit, and shall not include amounts allowed for a trade-in of similar property or products. "Purchase price" or "sales price" does not include finance charges, carrying charges or any other addition to the selling price as a result of deferred payments by the purchaser.

(g) "Lease" or "rent" means any agreement entered into for a consideration that transfers possession or control of tangible personal property or specified digital products to a person for use within this state.

(h) "Value" means the estimated or assessed monetary worth of a thing or property. The value of property or products transferred into this state for sales promotion or advertising shall be an amount not less than the cost paid

by the transferor or donor. The value of property or products which have been used in another state shall be determined by its cost less straight line depreciation provided that value shall never be less than twenty percent (20%) of the cost or other method acceptable to the commissioner. On property or products imported by the manufacturer thereof for rental or lease within this state, value shall be the manufactured cost of the property and freight to the place of use in Mississippi.

(i) "Tangible personal property" means personal property perceptible to the human senses or by chemical analysis, as opposed to real property or intangibles. "Tangible personal property" shall include printed, mimeographed, multigraphed matter, or material reproduced in any other manner, and books, catalogs, manuals, publications or similar documents covering the services of collecting, compiling or analyzing information of any kind or nature. However, reports representing the work of persons such as lawyers, accountants, engineers and similar professionals shall not be included. "Tangible personal property" shall also include tangible advertising or sales promotion materials such as, but not limited to, displays, brochures, signs, catalogs, price lists, point of sale advertising materials and technical manuals. Tangible personal property shall also include computer software programs.

(j) "Person doing business in this state," "person maintaining a place of business within this state," or any similar term means any person having within this state an office, a distribution house, a salesroom or house, a warehouse, or any other place of business, or owning personal property located in this state used by another person, or installing personal property in this state. This definition also includes any person selling or taking orders for any tangible personal property, either personally, by mail or through an employee representative, salesman, commission agent, canvasser, solicitor or independent contractor or by any other means from within the state. "Person doing business in this state" also includes any marketplace facilitator, marketplace seller, or remote seller with sales that exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in any consecutive twelve-month period. A sale made through a marketplace facilitator is a sale of the marketplace facilitator and not the sale of a marketplace seller for purposes of determining whether a person exceeds Two Hundred Fifty Thousand Dollars ($250,000.00) in sales.

Any person doing business under the terms of this article by reason of coming under any one or more of the qualifying provisions listed above shall be considered as doing business on all transactions involving sales to persons within this state.

(k) "Use" or "consumption" means the first use or intended use within this state of tangible personal property or specified digital product and shall include rental or loan by owners or use by lessees or other persons receiving benefits from use of the property or product. "Use" or "consumption" shall include the benefit realized or to be realized by persons importing or causing to be imported into this state tangible advertising or sales promotion materials.

(*l*) "Storage" means keeping tangible personal property or specified digital product in this state for subsequent use or consumption in this state.

(m) "Specified digital products" shall have the meaning ascribed to such term in Section 27-65-26.

(n) "Marketplace facilitator" means any person who facilitates a retail sale by a seller by:

(i) Listing or advertising for sale by the retailer in any forum, tangible personal property, services or digital goods that are subject to tax under this chapter; and

(ii) Either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the retailer regardless of whether the marketplace provider receives compensation or other consideration in exchange for its service.

(o) "Marketplace seller" means a seller that makes sales through any physical or electronic marketplace owned, operated, or controlled by a marketplace facilitator, even if such seller would not have been required to collect and remit sales tax had the sale not been made through such marketplace.

(p) "Remote seller" means a person, other than a marketplace facilitator, that does not maintain a place of business in this state and that through a forum sells tangible personal property, taxable services or specified digital products, the sale or use of which is subject to the tax imposed by this chapter.

HISTORY: Codes, 1942, § 10146-02; Laws, 1955, Ex. Sess. ch. 111, § 2; Laws, 1956, ch. 422, § 1; Laws, 1960, ch. 479, § 2; Laws, 1968, ch. 588, § 12; Laws, 1980, ch. 536, § 2; Laws, 1988, ch. 491, § 3; Laws, 1988, ch. 509, § 2; Laws, 1989, ch. 409, § 1; Laws, 2009, ch. 332, § 3; Laws, 2009, ch. 492, § 107; Laws, 2014, ch. 472, § 3, eff from and after July 1, 2014; Laws, 2020, ch. 425, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (j), added the last two sentences in the first paragraph; and added (n) through (p).

§ 27-67-11. Seller to collect tax from purchaser; collection of taxes by marketplace facilitator.

(1) Every person maintaining a place of business, or doing business, in this state, shall collect the tax imposed by this article from the purchaser and remit the tax to the commissioner as hereinafter provided. Failure to collect the tax from the purchaser shall not relieve the seller of liability for payment of the tax.

(2) This section does not affect or impair the:

(a) Obligation of a purchaser in this state to remit use tax on any applicable transaction in which the seller does not collect and remit sales or use tax;

(b) Obligation of a seller, when the seller is transacting business in the state and tax is collected on the transaction, to remit all state and local taxes

on any applicable transaction in which the seller provides goods or furnishes services within the state.

(c) Ability of a state entity to immediately collect the taxes described in this section.

(3) The department shall audit a marketplace facilitator solely for sales made by marketplace sellers and facilitated by the marketplace facilitator. The department shall not audit marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief from liability under subsection (5) of this section.

(4) A marketplace facilitator that collects and remits the taxes imposed by this chapter shall collect taxes on sales through its marketplace based upon the address where the tangible personal property or specified digital products taxable under this chapter are shipped or delivered; provided, however, that taxes on services sold through its marketplace shall be collected as otherwise provided.

(5) A marketplace facilitator is relieved of liability under this section for failure to collect and remit the correct amount of tax under this section to the extent that the failure was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller, provided that the marketplace facilitator can demonstrate it made a reasonable effort to obtain correct and sufficient information from the marketplace seller. This subsection does not apply if the marketplace facilitator and the marketplace seller are related.

(6) Nothing herein shall prohibit the marketplace facilitator and the marketplace seller from contractually agreeing to have the marketplace seller collect and remit all applicable taxes and fees where the marketplace seller:

(a) Has annual United States gross sales over One Billion Dollars ($1,000,000,000.00), including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;

(b) Provides evidence to the marketplace facilitator that it is registered under Section 27-65-27 or Section 27-67-9 in this state; and

(c) Notifies the department in a manner prescribed by the department that the marketplace seller will collect and remit all applicable taxes on its sales through the marketplace and is liable for failure to collect or remit applicable taxes on its sales.

(7) Any person selling tangible personal property or specified digital products that does not maintain a place of business in this state may be authorized by the commissioner to collect the tax from customers in Mississippi who are liable for its payment, and such person shall remit the tax to the commissioner in the same manner and subject to the same requirements as a person maintaining a place of business or doing business within this state. Such authority may be cancelled at any time when, in the judgment of the commissioner, the tax can be collected more effectively from the purchaser in this state. When the tax has been collected from the purchaser, the seller shall be liable for payment of the tax to the commissioner.

(8) Every person required or authorized to collect the tax shall add to the sales price of tangible personal property, services or specified digital products the amount of the tax imposed on purchaser for the use, storage, or consumption thereof, and, when so added, the tax shall be a debt from the purchaser to the seller until paid, and shall be collectible at law in the same manner as other debts. It shall be unlawful for any person to advertise, hold out, or state to the public or to any customer that the tax herein imposed will be assumed or absorbed by the seller or that any part thereof will be refunded. Said tax shall be stated separately from the sales price on the sales invoice and shown separately on the seller's records. The purchaser shall pay the tax to the seller as trustee for and on account of the state.

HISTORY: Codes, 1942, § 10146-06; Laws, 1955, Ex. Sess. ch. 111, § 6; Laws, 1960, ch. 479, § 6, eff June 1, 1960; Laws, 2009, ch. 332, § 10, eff from and after July 1, 2009; Laws, 2020, ch. 425, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (2) through (6); and redesignated former (2) and (3) as (7) and (8).

§ 27-67-19. Extension of time; damages.

The commissioner may grant a reasonable extension of time for making any return and paying the tax due thereon, but the time for filing any such return shall not be extended beyond the twentieth of the month next succeeding the regular due date of such return without the imposition of interest at the rate of one-half of one percent (1/2 of 1%) per month, or fractional part of a month, from the regular due date of such return until the tax is paid.

For persistent, willful or recurring failure to make any return and pay the tax shown thereby to be due, by the time specified herein, there shall be added to the amount of tax shown to be due, ten percent (10%) damages, or interest at the rate of one-half of one percent (1/2 of 1%) per month, or both.

HISTORY: Codes, 1942, § 10146-10; Laws, 1955, Ex. Sess. ch. 111, § 10; ch. 479, § 9; Laws, 1988, ch. 491, § 4, eff from and after July 1, 1988; Laws, 2020, ch. 372, § 7, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "one-half of one percent (1/2 of 1%)" for "one percent (1%)" both times it appears.

§ 27-67-31. Administration of article by commissioner; monthly distribution of funds.

All administrative provisions of the sales tax law, and amendments thereto, including those which fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon taxpayer, shall apply to all persons liable for use taxes under the provisions of this article. The commissioner shall exercise all power and authority and perform all duties with respect to taxpayers under this article as are provided in said sales tax law, except where there is conflict, then the provisions of this article shall control.

The commissioner may require transportation companies to permit the examination of waybills, freight bills, or other documents covering shipments of tangible personal property into this state.

On or before the fifteenth day of each month, the amount received from taxes, damages and interest under the provisions of this article during the preceding month shall be paid and distributed as follows:

(a) On or before July 15, 1994, through July 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited in the School Ad Valorem Tax Reduction Fund created pursuant to Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total use tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Four Million Dollars ($4,000,000.00). Thereafter, the amounts diverted under this paragraph (a) during the fiscal year in excess of Four Million Dollars ($4,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(b) On or before July 15, 1994, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the Education Enhancement Fund created pursuant to Section 37-61-33.

(c) On or before July 15, 1997, and on or before the fifteenth day of each succeeding month thereafter, the revenue collected under the provisions of this article imposed and levied as a result of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section 27-51-105.

(d) On or before July 15, 1997, and on or before the fifteenth day of each succeeding month thereafter and after the deposits required by paragraphs (a) and (b) of this section are made, the remaining revenue collected under the provisions of this article imposed and levied as a result of Section 27-65-17(1) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section 27-51-105.

(e) On or before August 15, 2019, and each succeeding month thereafter through July 15, 2020, three and three-fourths percent (3-3/4%) of the total use tax revenue collected during the preceding month under the provisions

of this article shall be deposited into the special fund created in Section 27-67-35(1). On or before August 15, 2020, and each succeeding month thereafter through July 15, 2021, seven and one-half percent (7-1/2%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(1). On or before August 15, 2021, and each succeeding month thereafter through July 15, 2022, eleven and one-fourth percent (11-1/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(1). On or before August 15, 2022, and each succeeding month thereafter, fifteen percent (15%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(1).

(f) On or before August 15, 2019, and each succeeding month thereafter through July 15, 2020, three and three-fourths percent (3-3/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2020, and each succeeding month thereafter through July 15, 2021, seven and one-half percent (7-1/2%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2021, and each succeeding month thereafter through July 15, 2022, eleven and one-fourth percent (11-1/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2022, and each succeeding month thereafter, fifteen percent (15%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2).

(g) On or before August 15, 2019, and each succeeding month thereafter through July 15, 2020, Four Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($416,666.67) or one and one-fourth percent (1-1/4%) of the total use tax revenue collected during the preceding month under the provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. On or before August 15, 2020, and each succeeding month thereafter through July 15, 2021, Eight Hundred Thirty-three Thousand Three Hundred Thirty-three Dollars and Thirty-four Cents ($833,333.34) or two and one-half percent (2-1/2%) of the total use tax revenue collected during the preceding month under the provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. On or before August 15, 2021, and each succeeding month thereafter through July 15, 2022, One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00) or three and three-fourths percent (3-3/4%) of the total use tax revenue collected during the preceding month under the

provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. On or before August 15, 2022, and each succeeding month thereafter, One Million Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($1,666,666.67) or five percent (5%) of the total use tax revenue collected during the preceding month under the provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13.

(h) On or before August 15, 2020, and each succeeding month thereafter through July 15, 2022, One Million Dollars ($1,000,000.00) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. Amounts deposited into the Local System Bridge Replacement and Rehabilitation Fund under this paragraph (h) shall be in addition to amounts deposited into the fund under paragraph (g) of this section.

(i) The remainder of the amount received from taxes, damages and interest under the provisions of this article shall be paid into the General Fund of the State Treasury by the commissioner.

HISTORY: Codes, 1942, § 10146-13; Laws, 1955, Ex Sess ch. 111, § 13; Laws, 1960, ch. 479, § 10; Laws, 1994, ch. 456, § 1; Laws, 1997, ch. 566, § 2; Laws, 1997, ch. 612, § 27; Laws, 2000, ch. 617, § 2, eff from and after July 1, 2000; Laws, 2018, 1st Ex Sess, ch. 1, § 1, eff from and after passage (approved August 29, 2018); Laws, 2020, ch. 425, § 5, eff from and after July 1, 2020.

Editor's Notes — Laws of 2018, 1st Extraordinary Session, ch. 1, §§ 14 and 15, effective from and after August 29, 2018, provide:

"SECTION 14. This act shall be known and may be cited as the Mississippi Infrastructure Modernization Act of 2018.

"SECTION 15. Sections 5 and 6 of this act shall take effect and be in force from and after October 1, 2018, the remainder of this act shall take effect and be in force from and after its passage."

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective August 29, 2018, added (e) through (g) and redesignated former (e) as (h).

The 2020 amendment added (h); and redesignated former (h) as (i).

§ 27-67-35. Special fund created to assist municipalities and counties in paying for the repair, maintenance, reconstruction of roads, streets, bridges; distribution of funds.

(1)(a) There is hereby created a special fund in the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. The fund shall consist of monies deposited therein under Section 27-67-31(e) and monies from any other source designated for deposit into such fund. Monies in the fund shall be expended by the Department of Revenue to provide funds to

assist municipalities in this state in paying costs associated with (i) repair, maintenance and/or reconstruction of roads, streets and bridges in municipalities and (ii) repair, maintenance and/or other improvements to water infrastructure and sewer infrastructure. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund.

(b)(i) Subject to the provisions of this paragraph (b) and Section 65-21-31, funds provided to municipalities under this subsection (1) shall be allocated and distributed to municipalities as follows:

1. Three Million Dollars ($3,000,000.00) shall be allocated to all municipalities in equal shares, and

2. The remainder of the funds allocated as follows:

a. One-half (1/2) shall be allocated to municipalities based on the proportion that the population of a municipality according to the most recent federal decennial census bears to the total population of all municipalities in the state according to the most recent federal decennial census, and

b. One-half (1/2) shall be allocated to municipalities based on the proportion that the amount of sales tax revenue distributed to a municipality during the preceding fiscal year under Section 27-65-75(1)(a) bears to the total amount of sales tax revenue distributed to all municipalities during the preceding fiscal year under Section 27-65-75(1)(a). The Department of Revenue shall distribute funds under this subsection (1) on a semiannual basis with distributions being made in the months of January and July.

(ii) In order to be eligible to receive the full amount of funds allocated for distribution to a municipality during a year under this subsection (1), the municipality must have expended an amount not less than the amount of base expenditures during the previous municipal fiscal year for the purposes described in paragraph (a) of this subsection (1). If a municipality fails to expend such required amount, then the amount of funds allocated for distribution to the municipality shall be reduced by the percentage by which the municipality failed to expend the amount of base expenditures. For the purposes of this subsection (1), "base expenditures" means the average annual expenditures made by a municipality for purposes described in paragraph (a) of this subsection (1) for the five-year period beginning October 1, 2013, and ending September 30, 2018. However, for the purposes of calculating the average annual expenditures for such five-year period, the year within the period with the highest annual expenditures for such purposes and the year within the period with the lowest annual expenditures for such purposes shall be excluded when calculating the average annual expenditures for the five-year period. Expenditure of grant proceeds, loan proceeds, or the proceeds of bonds issued by a municipality for the purposes described in paragraph (a) of this subsection (1) shall not be considered when calculating the base period.

Beginning July 1, 2020, and each succeeding July 1 thereafter, the amount of the base expenditures shall be adjusted and compounded annually by increasing or decreasing such amount by a percentage amount equal to the United States inflation rate for the previous calendar year ending on December 31 as certified by the Department of Revenue. The United States inflation rate for a calendar year shall be the Consumer Price Index for the calendar year for urban consumers as calculated by the Bureau of Labor Statistics of the United States Department of Labor.

(c) The Department of Revenue and the Department of Audit shall have all powers necessary to ensure the proper implementation of this subsection (1).

(2)(a) There is hereby created a special fund in the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. The fund shall consist of monies deposited therein under Section 27-67-31(f) and monies from any other source designated for deposit into such fund. Monies in the fund shall be expended by the Department of Revenue to provide funds to assist counties in this state in paying costs associated with the repair, maintenance and/or reconstruction of roads, streets and bridges in counties. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund.

(b)(i) Subject to the provisions of this paragraph (b) and Section 65-21-31, funds provided to counties under this subsection (2) shall be allocated and distributed to counties in the following proportions:

1. One-third (1/3) shall be allocated to all counties in equal shares,

2. One-third (1/3) shall be allocated to counties based on the proportion that the total number of rural road miles in a county bears to the total number of rural road miles in all counties of the state, and

3. One-third (1/3) shall be allocated to counties based on the proportion that the rural population of a county bears to the total rural population in all counties of the state, according to the latest federal decennial census. The Department of Revenue shall distribute funds under this subsection (2) on a semiannual basis with distributions being made in the months of January and July. Rural road miles and rural road population in the counties shall be determined in the same manner as they are determined for the purposes of the distribution formula in Section 65-9-3.

(ii) From and after July 1, 2020, of the funds allocated for distribution to a county during a year under this subsection (2), the maximum amount of such funds that may be distributed to the county during that year shall not exceed the amount of county funds expended by the county during the previous county fiscal year for purposes described in paragraph (a) of this subsection (2). Expenditure of the proceeds of bonds issued by a county to pay costs associated with the repair, maintenance and/or reconstruction of

roads, streets and bridges shall not be considered when determining the amount of county funds expended by the county during the previous county fiscal year.

(c) The Department of Revenue and the Department of Audit shall have all powers necessary to ensure the proper implementation of this subsection (2).

HISTORY: Laws, 2018, 1st Ex Sess, ch. 1, § 2, eff from and after passage (approved August 29, 2018); Laws, 2020, ch. 441, § 1, eff from and after July 1, 2020.

Editor's Notes — A former § 27-67-35 [Laws, 1994, ch. 563, § 5; Repealed by Laws of 1997, ch. 566, § 3, eff from and after July 1, 1997] provided for certain disbursements to the Motor Vehicle Ad Valorem Tax Reduction Fund.

Laws of 2018, 1st Extraordinary Session, ch. 1, §§ 14 and 15, effective from and after August 29, 2018, provide:

"SECTION 14. This act shall be known and may be cited as the Mississippi Infrastructure Modernization Act of 2018.

"SECTION 15. Sections 5 and 6 of this act shall take effect and be in force from and after October 1, 2018, the remainder of this act shall take effect and be in force from and after its passage."

Amendment Notes — The 2020 amendment, in (1)(b)(ii), inserted "grant proceeds, loan proceeds, or" in the fifth sentence.

CHAPTER 69.

TOBACCO TAX

Sec.

27-69-9. Permit may be revoked or suspended.
27-69-41. Penalties.

§ 27-69-5. Permit required, and penalty for failure to secure or renew same.

HISTORY: Codes, 1942, § 10170; Laws, 1934, ch. 125; Laws, 1940, ch. 119; Laws, 1955, Ex. Sess ch. 115, § 2; Laws, 1985, ch. 351, § 6; Laws, 1997, ch. 578, § 12; Laws, 1998, ch. 422, § 1; Laws, 2011, ch. 520, § 4, eff from and after July 1, 2011; brought forward without change, Laws, 2020, ch. 331, § 2, eff from and after July 1, 2020.

Editor's Notes — This section was brought forward without change by Laws of 2020, ch. 331, § 2, effective from and after July 1, 2020. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2020 amendment brought the section forward without change.

§ 27-69-9. Permit may be revoked or suspended.

(1) In addition to the penalties imposed in this chapter, after the second offense for any violation, the commissioner may revoke any permit that may

have been issued to any person, or persons, violating any provisions of this chapter, or any rules or regulations promulgated by the commissioner under authority of this chapter.

(2)(a) No manufacturer or wholesale dealer shall sell, offer to sell, or deliver any tobacco products to any retail dealer in this state and no retail dealer in tobacco products shall buy or accept delivery for any such product for any consideration other than cash or on terms. If payment is not received when due or payment is returned for insufficient funds, the vendor, within five (5) business days, shall notify the commissioner thereof and the commissioner shall promptly notify all manufacturers and wholesale dealers in the state of the default in payment and thereafter no person shall sell any tobacco products to the retailer in default on any other terms than cash delivery, until otherwise authorized by the commissioner. Under penalty of suspension of the permit, the retailer who is in default shall pay his obligation in full within thirty (30) days from the date it became due.

(b) Any permittee that violates the provisions of this section may have his permit suspended for not more than thirty (30) days for each offense. Each failure of a retail dealer to make payment for any default before the expiration period of suspension constitutes a separate offense. The commissioner may permanently revoke the permit of any permittee who is suspended for default in payment for more than six (6) months in any twelve-month period.

(c) In addition, the commissioner may require the retail dealer to make payment in cash for all tobacco products subsequently sold or delivered to him.

(3) The commissioner, in the event a permit is suspended or revoked, is required to notify all manufacturers, wholesalers and distributors having a permit required by this chapter, that the permit has been suspended or revoked, and such manufacturer, wholesaler and distributor is henceforth prohibited from selling taxable tobacco to such dealer or retailer. The commissioner may notify manufacturers, wholesalers and distributors as required by this paragraph either manually or electronically and shall specify by rule or regulation the method by which the notification shall be made.

HISTORY: Codes, 1942, § 10172; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 8; Laws, 1997, ch. 578, § 13; Laws, 2005, ch. 499, § 29; Laws, 2012, ch. 566, § 8, eff from and after passage (approved May 23, 2012); Laws, 2020, ch. 331, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment designated the formerly undesignated first and second paragraphs as (1) and (3) respectively; added (2); in (3), inserted "suspended or" twice; and made a minor stylistic change.

§ 27-69-41. Penalties.

If any person subject to the provisions of this chapter, or any rules or regulations promulgated by the commissioner under authority hereof, shall be

found to have failed to affix the stamps required, or to have the same affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter, or rules and regulations promulgated by the commissioner in the administration of this chapter, there shall be collected from such person, in addition to the tax that may be due, a penalty of fifty percent (50%) of the tax due; and the commissioner, or his duly authorized representative, may make immediate demand upon such person for the payment of all such taxes and penalties. Provided, that the commissioner, for good reason shown, may remit all or any part of the penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate of six percent (6%) per annum. The keeping of any unstamped cigarettes or untaxed tobacco at a place of business where such articles are sold, shall be prima facie evidence of intent to violate the provisions of this chapter.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Sales Tax Law, except where there is conflict, then the provisions of this chapter shall control.

HISTORY: Codes, 1942, § 10187; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1955, Ex. Sess, ch. 115, § 5; Laws, 1985, ch. 351, § 16, eff from and after June 1, 1985; Laws, 2020, ch. 372, § 8, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "six percent (6%)" for "twelve percent (12%)" in the first paragraph.

CHAPTER 71.

ALCOHOLIC BEVERAGE TAXES

Article 1.	Alcoholic Beverages.	27-71-1
Article 3.	Light Wines, Light Spirit Products and Beer.	27-71-301
Article 5.	Breweries.	27-71-501

ARTICLE 1.

ALCOHOLIC BEVERAGES.

Sec.

27-71-5. Annual privilege taxes and other fees; permits; penalties; prohibition of alcoholic beverages in public places [Paragraph (1)(x) Repealed effective July 1, 2023].

27-71-29. Payment of taxes into treasury.

§ 27-71-1. Administration of article.

Editor's Notes — Laws of 2020, ch. 443, § 1, effective July 3, 2020, provides: "SECTION 1. (1) As used in this act, the following terms shall have the following

meanings:

"(a) 'Corporation' means the Mississippi Liquor Distribution Corporation.

"(b) 'Department' means the Mississippi Department of Revenue.

"(c) 'Division' means the Alcoholic Beverage Control Division of the department.

"(d) 'Board' means the corporation's board of directors.

"(2) There is created a study committee for the purpose of investigating the advisability of the creation of a Mississippi Liquor Distribution Corporation to assume responsibility for the sale and distribution of alcoholic beverages currently under the purview of the Alcoholic Beverage Control Division of the Department of Revenue. The committee shall comprise the following thirteen (13) members:

"(a) The Chairman of the Senate Finance Committee;

"(b) Five (5) other members of the Senate, to be appointed by the Chairman of the Senate Finance Committee;

"(c) The Chairman of the House Ways and Means Committee;

"(d) Five (5) other members of the House of Representatives, to be appointed by the Chairman of the House Ways and Means Committee; and

"(e) A member of the department, or a designee, as ex officio, nonvoting member.

"(3) The committee shall study, at a minimum, the following questions:

"(a) The advisability of creating the corporation as a wholesale distributor and seller of alcoholic beverages in the state;

"(b) The nature and scope of the duties of the corporation, and the relationship of those duties to the duties retained by the division;

"(c) The membership and duties of the corporation's board of directors;

"(d) The authority of the board to charge fees to defray the costs of operating, maintaining, renovating or expanding facilities for the distribution of alcoholic beverages;

"(e) The appointment, term of office and duties of the corporation's president;

"(f) The public nature of the corporation's records, and any exceptions;

"(g) The existence of information sharing agreements between the corporation and the department;

"(h) The authority of the board to employ attorneys and contract with outside counsel;

"(i) A requirement that the corporation maintain a personnel program with benefits for its employees, to serve at the will and pleasure of the president and not to be subject to civil service provisions or to be considered employees of the state;

"(j) Prohibited conflicts of interest, provide penalties for violations, and enforcement by the State Ethics Commission;

"(k) A requirement that the corporation publish quarterly and annual financial statements to be available to the public;

"(*l*) The authority of the corporation to enter contracts and adopt procedures for procurements;

"(m) Provision of funding for the corporation through a corporate operating account retained by and to the credit of the corporation, to contain monies from the sale of alcoholic beverages and other sources;

"(n) Designation of officers and employees of the corporation as public servants under Section 25-4-103;

"(o) A requirement that officers of the corporation file a statement of economic interest with the State Ethics Commission under Section 25-4-25;

"(p) A requirement that the corporation submit quarterly and annual reports and financial statements;

"(q) A requirement of an annual audit of the corporation's records by an independent auditor; and

"(r) A requirement that the corporation submit its annual operating budget for the upcoming fiscal year to the Joint Legislative Budget Committee.

"(4) Appointments to the study committee shall be made within thirty (30) days of the effective date of this act. At the first meeting, the committee shall elect from among its membership a chairman, a vice chairman and any other officers determined to be

necessary, and shall adopt rules for transacting business and keeping records.

"(5) A majority of the members of the study committee shall constitute a quorum. In the adoption of rules, resolutions and reports, and in the election of a chairman, vice chairman and any other officers determined to be necessary, an affirmative vote of a majority of the members present shall be required.

"(6) The department shall provide the staff and other support necessary for the study committee to perform its duties.

"(7) To effectuate the purposes of this act, any department, division, board, bureau, committee, institution or agency of the state, or any political subdivision thereof, shall, at the request of the chairman of the study committee, provide the facilities, assistance, information and data needed to enable the study committee to carry out its duties.

"(8) The study committee shall be dissolved on or before January 1, 2021."

§ 27-71-5. Annual privilege taxes and other fees; permits; penalties; prohibition of alcoholic beverages in public places [Paragraph (1)(x) Repealed effective July 1, 2023].

(1) Upon each person approved for a permit under the provisions of the Alcoholic Beverage Control Law and amendments thereto, there is levied and imposed for each location for the privilege of engaging and continuing in this state in the business authorized by such permit, an annual privilege license tax in the amount provided in the following schedule:

(a) Except as otherwise provided in this subsection (1), manufacturer's permit, Class 1, distiller's and/or rectifier's	$4,500.00
(b) Manufacturer's permit, Class 2, wine Manufacturer	$1,800.00
(c) Manufacturer's permit, Class 3, native wine manufacturer per ten thousand (10,000) gallons or part thereof produced	$ 10.00
(d) Native wine retailer's permit	$ 50.00
(e) Package retailer's permit, each	$ 900.00
(f) On-premises retailer's permit, except for clubs and common carriers, each	$ 450.00
(g) On-premises retailer's permit for wine of more than five percent (5%) alcohol by weight, but not more than twenty-one percent (21%) alcohol by weight, each	$ 225.00
(h) On-premises retailer's permit for clubs	$ 225.00
(i) On-premises retailer's permit for common carriers, per car, plane, or other vehicle	$ 120.00
(j) Solicitor's permit, regardless of any other provision of law, solicitor's permits shall be issued only in the discretion of the department	$ 100.00
(k) Filing fee for each application except for an employee identification card	$ 25.00
(*l*) Temporary permit, Class 1, each	$ 10.00
(m) Temporary permit, Class 2, each	$ 50.00

(n) (i) Caterer's permit	$ 600.00
(ii) Caterer's permit for holders of on-premises retailer's permit	$ 150.00
(o) Research permit	$ 100.00
(p) Temporary permit, Class 3 (wine only)	$ 10.00
(q) Special service permit	$ 225.00
(r) Merchant permit	$ 225.00
(s) Temporary alcoholic beverages charitable auction permit	$ 10.00
(t) Event venue retailer's permit	$ 225.00
(u) Temporary theatre permit, each	$ 10.00
(v) Charter ship operator's permit	$ 100.00
(w) Distillery retailer's permit	$ 450.00
(x) Festival wine permit	$ 10.00

If a person approved for a manufacturer's permit, Class 1, distiller's permit produces a product with at least fifty-one percent (51%) of the finished product by volume being obtained from alcoholic fermentation of grapes, fruits, berries, honey and/or vegetables grown and produced in Mississippi, and produces all of the product by using not more than one (1) still having a maximum capacity of one hundred fifty (150) liters, the annual privilege license tax for such a permit shall be Ten Dollars ($10.00) per ten thousand (10,000) gallons or part thereof produced. Bulk, concentrated or fortified ingredients used for blending may be produced outside this state and used in producing such a product.

In addition to the filing fee imposed by paragraph (k) of this subsection, a fee to be determined by the Department of Revenue may be charged to defray costs incurred to process applications. The additional fees shall be paid into the State Treasury to the credit of a special fund account, which is hereby created, and expenditures therefrom shall be made only to defray the costs incurred by the Department of Revenue in processing alcoholic beverage applications. Any unencumbered balance remaining in the special fund account on June 30 of any fiscal year shall lapse into the State General Fund.

All privilege taxes imposed by this section shall be paid in advance of doing business. The additional privilege tax imposed for an on-premises retailer's permit based upon purchases shall be due and payable on demand.

Paragraph (x) of this subsection shall stand repealed from and after July 1, 2023.

(2)(a) There is imposed and shall be collected from each permittee, except a common carrier, solicitor or a temporary permittee, by the department, an additional license tax equal to the amounts imposed under subsection (1) of this section for the privilege of doing business within any municipality or county in which the licensee is located.

(b)(i) In addition to the tax imposed in paragraph (a) of this subsection,

there is imposed and shall be collected by the department from each permittee described in subsection (1)(f), (g), (h), (m) and (t) of this section, an additional license tax for the privilege of doing business within any municipality or county in which the licensee is located in the amount of Two Hundred Twenty-five Dollars ($225.00) on purchases exceeding Five Thousand Dollars ($5,000.00) and Two Hundred Twenty-five Dollars ($225.00) for each additional purchase of Five Thousand Dollars ($5,000.00), or fraction thereof.

(ii) In addition to the tax imposed in paragraph (a) of this subsection, there is imposed and shall be collected by the department from each permittee described in subsection (1)(n) and (r) of this section, an additional license tax for the privilege of doing business within any municipality or county in which the licensee is located in the amount of Two Hundred Fifty Dollars ($250.00) on purchases exceeding Five Thousand Dollars ($5,000.00) and Two Hundred Twenty-five Dollars ($225.00) for each additional purchase of Five Thousand Dollars ($5,000.00), or fraction thereof.

(iii) Any person who has paid the additional privilege license tax imposed by this paragraph, and whose permit is renewed, may add any unused fraction of Five Thousand Dollars ($5,000.00) purchases to the first Five Thousand Dollars ($5,000.00) purchases authorized by the renewal permit, and no additional license tax will be required until purchases exceed the sum of the two (2) figures.

(c) If the licensee is located within a municipality, the department shall pay the amount of additional license tax collected under this section to the municipality, and if outside a municipality the department shall pay the additional license tax to the county in which the licensee is located. Payments by the department to the respective local government subdivisions shall be made once each month for any collections during the preceding month.

(3) When an application for any permit, other than for renewal of a permit, has been rejected by the department, such decision shall be final. Appeal may be made in the manner provided by Section 67-1-39. Another application from an applicant who has been denied a permit shall not be reconsidered within a twelve-month period.

(4) The number of permits issued by the department shall not be restricted or limited on a population basis; however, the foregoing limitation shall not be construed to preclude the right of the department to refuse to issue a permit because of the undesirability of the proposed location.

(5) If any person shall engage or continue in any business which is taxable under this section without having paid the tax as provided in this section, the person shall be liable for the full amount of the tax plus a penalty thereon equal to the amount thereof, and, in addition, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term of not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(6) It shall be unlawful for any person to consume alcoholic beverages on the premises of any hotel restaurant, restaurant, club or the interior of any public place defined in Chapter 1, Title 67, Mississippi Code of 1972, when the owner or manager thereof displays in several conspicuous places inside the establishment and at the entrances of establishment a sign containing the following language: NO ALCOHOLIC BEVERAGES ALLOWED.

HISTORY: Codes, 1942, § 10265-103; Laws, 1966, ch. 649, § 3; Laws, 1976, ch. 467, § 9; Laws, 1984, ch. 425, § 2; Laws, 1986, ch. 381; Laws, 1988, ch. 302, § 2; Laws, 1989, ch. 484, § 2; Laws, 1994, ch. 538, § 1; Laws, 2004, ch. 479, § 1; Laws, 2006, ch. 529, § 1; Laws, 2009, ch. 465, § 3; Laws, 2014, ch. 527, § 2; Laws, 2015, ch. 357, § 1; Laws, 2015, ch. 462, § 2, eff from and after July 1, 2015; Laws, 2018, ch. 453, § 3, eff from and after April 13, 2018; Laws, 2020, ch. 429, § 3, eff from and after passage (approved July 1, 2020).

Editor's Notes — Laws of 2018, ch. 453, § 5, provides:

"SECTION 5. Sections 1 and 3 of this act shall take effect and be in force from and after the passage of this act [April 13, 2018] and the remainder of this act shall take effect and be in force from and after July 1, 2018."

Amendment Notes — The 2018 amendment, effective April 13, 2018, provided fortwo versions of the section; in the version effective through June 30, 2018, substituted "alcoholic beverages" for "wine" in (1)(s); and in the version effective from and after July 1, 2018, added (1)(w).

The 2020 amendment, in (1), added (x) and the last paragraph containing the repealer for (x).

§ 27-71-29. Payment of taxes into treasury.

All taxes levied by this article shall be paid to the Department of Revenue in cash or by personal check, cashier's check, bank exchange, post office money order or express money order and shall be deposited by the department in the State Treasury on the same day collected, but no remittances other than cash shall be a final discharge of liability for the tax herein imposed and levied unless and until it has been paid in cash to the department.

All taxes levied under Section 27-71-7(1) and received by the department under this article shall be paid into the General Fund, and the three percent (3%) levied under Section 27-71-7(2) and received by the department under this article shall be paid into the special fund in the State Treasury designated as the "Alcoholism Treatment and Rehabilitation Fund" as required by law. Any funds derived from the sale of alcoholic beverages in excess of inventory requirements shall be paid not less often than annually into the General Fund, except for fees charged by the department for the defraying of costs associated with shipping alcoholic beverages. The revenue derived from these fees shall be deposited by the department into a special fund, hereby created in the State Treasury, which is designated the "ABC Shipping Fund." The monies in this special fund shall be earmarked for use by the department for any expenditure made to ship alcoholic beverages. Any net proceeds remaining in the special fund on August 1 of any fiscal year shall lapse into the General Fund. "Net proceeds" in this section means the total of all fees collected by the department to defray the costs of shipping less the actual costs of shipping.

HISTORY: Codes, 1942, § 10265-115; Laws, 1966, ch. 649, § 15; Laws, 1977, ch. 498, § 2; Laws, 1984, ch. 478, § 26, eff from and after July 1, 1984; Laws, 2020, ch. 428, § 2, eff from and after passage (approved July 1, 2020).

Amendment Notes — The 2020 amendment substituted "Department of Revenue" and "department" for "State Tax Commission" and "commission" throughout the section; and in the second paragraph, added the exception in the second sentence, and added the last four sentences.

ARTICLE 3.

LIGHT WINES, LIGHT SPIRIT PRODUCTS AND BEER.

Sec.

27-71-301. Definitions.
27-71-303. License tax imposed.
27-71-307. Excise tax imposed.
27-71-311. Bond required of manufacturer, wholesaler and brewpub.
27-71-315. Transportation from without the state.
27-71-317. Transportation within the state.
27-71-325. Reports of wholesaler and preservation of invoices.
27-71-327. Records to be maintained.
27-71-331. Penalty.
27-71-333. Assessment and collection of penalty.
27-71-335. Tax and penalty upon contraband light wine, light spirit product and beer; confiscation.
27-71-345. Privilege tax to be levied by municipality.
27-71-349. Designation of sales territories for sale of light wine, light spirit product and beer by manufacturers and importers; presentation of light wine, light spirit product or beer to retailers by licensed wholesalers; transportation of light wine, light spirit product or beer; deliveries to retailers; sales by wholesalers to retailers in territories of other wholesalers; purchases for resale.

§ 27-71-301. Definitions.

When used in this article the words and terms hereafter mentioned shall have the following definitions:

(a) "State Auditor" means the State Auditor of Public Accounts of the State of Mississippi or any legally appointed deputy, clerk or agent.

(b) "Person" includes all natural persons or corporations, a partnership, an association, a joint venture, an estate, a trust, or any other group or combination acting as a unit and shall include the plural as well as the singular unless an intention to give another meaning thereto is disclosed in the context.

(c) "Consumer" means a person who comes into the possession of beer, light spirit product or light wine, the sale of which is authorized by Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose of consuming it, giving it away or otherwise disposing of it in any manner except by sale, barter or exchange.

(d) "Retailer" means any person who comes into the possession of such light wines, light spirit products or beer for the purpose of selling it to the

consumer, or giving it away, or exposing it where it may be taken or purchased or acquired in any other manner by the consumer; however, the term "retailer" shall not include a person who offers and provides beer on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

(e) "Wholesaler" means any person who comes into possession of such light wine, light spirit product or beer for the purpose of selling, distributing, or giving it away to retailers or other wholesalers or dealers inside or outside of this state.

(f) "Commissioner" means the Commissioner of Revenue of the Department of Revenue or his duly appointed agents or employees.

(g) "Sale" includes the exchange of such light wines, light spirit products or beer for money, or giving away or distributing any such light wines, light spirt products or beer for anything of value; however, the term "sale" shall not include beer offered and provided on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

(h) "Light wines, light spirit products or beer" means beer, light spirit products and light wines legalized for sale by the provisions of Chapter 3 of Title 67, Mississippi Code of 1972.

(i) "Distributor" includes every person who receives either from within or from without this state, from a brewery, a winery or any other source, light wines, light spirit products or beer as defined in Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose of distributing or otherwise disposing of such light wines, light spirit products or beer to a wholesaler or retailer of such light wines, light spirit products or beer.

(j) "Brewpub" means the premises of any location in which light wine, light spirit product or beer is manufactured or brewed, for retail sale if the total amount of light wine, light spirit product or beer produced on the premises does not exceed the production limitation imposed in Section 67-3-22, and the light wine, light spirit product or beer is produced for consumption on the premises, although without prohibition on sales for off-premises consumption.

(k) "Hospitality cart" means a mobile cart from which alcoholic beverages and light wine, light spirit product and beer are sold on a golf course and for which a hospitality cart permit has been issued under Section 67-1-51.

(*l*) "Small craft brewery" shall have the meaning ascribed to such term in Section 67-3-3.

(m) "Manufacturer" means a person who brews beer at a brewery; however, the term does not include "brewpubs."

HISTORY: Codes, 1942, § 10237; Laws, 1934, ch. 127; Laws, 1998, ch. 308, § 1; Laws, 2007, ch. 462, § 7; Laws, 2009, ch. 492, § 112; Laws, 2012, ch. 569, § 4; Laws, 2017, ch. 345, § 8, eff from and after July 1, 2017; Laws, 2020, ch. 314, § 48, eff from and after passage (approved June 18, 2020); Laws, 2020, ch. 347, § 3, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 48 of Chapter 314, Laws of 2020,

effective from and after passage (approved June 18, 2020), amended this section. Section 3 of Chapter 347, Laws of 2020, effective from and after July 1, 2020 (approved June 23, 2020), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the October 19, 2020, meeting of the Committee.

Amendment Notes — The first 2020 amendment (ch. 314), effective June 18, 2020, inserted "light spirit product" and "light spirit products" everywhere they appear.

The second 2020 amendment (ch. 347), in (j), at the end substituted "although without prohibition on sales for off-premises consumption" for "or off the premises as authorized in Section 67-3-22(3)."

§ 27-71-303. License tax imposed.

Upon each person approved for a permit to engage in the business of selling light wines, light spirit products or beer there is hereby imposed, levied and assessed, to be collected and paid as herein provided, annual privilege taxes in the following amounts:

(a) Retailers—for each place of business ..... $ 30.00

(b) Wholesalers or distributors—for each county ..... $ 100.00

(c) Manufacturers—for each place of business $1,000.0

(d) Brewpubs—for each place of business $1,000.00

Upon each person operating an airline, bus, boat or railroad car upon which light wines, light spirit products or beer may be sold there is hereby imposed, levied and assessed, to be collected and paid, annual privilege taxes of Thirty Dollars ($30.00) for each airplane, bus, boat or railroad car so operated in this state.

Provided, however, the amount of the privilege tax to be paid for a permit issued for a period of less than twelve (12) months shall be that proportionate amount of the annual privilege tax that the number of months, or part of a month, remaining until its expiration date bears to twelve (12) months, but in no case shall the privilege tax be less than Ten Dollars ($10.00).

HISTORY: Codes, 1942, § 10240; Laws, 1934, ch. 127; Laws, 1979, ch. 423, § 1; Laws, 1998, ch. 308, § 2, eff from and after July 1, 1998; Laws, 2020, ch. 314, § 49, eff from and after passage (approved June 18, 2020); brought forward without change, Laws, 2020, ch. 347, § 4, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 49 of Chapter 314, Laws of 2020, effective from and after passage (approved June 18, 2020), amended this section. Section 4 of Chapter 347, Laws of 2020, effective from and after July 1, 2020 (approved June 23, 2020), brought the section forward without change. Since Section 4 of Chapter 347 made no changes to the section, there was nothing to integrate, and the section is set out above as amended by Section 49 of Chapter 314, Laws of 2020.

Amendment Notes — The first 2020 amendment (ch. 314), effective June 18, 2020, inserted "light spirit products" in the first and second paragraphs.

The second 2020 amendment (ch. 347) brought the section forward without change.

§ 27-71-307. Excise tax imposed.

(1)(a) In addition to the specific tax imposed in Section 27-71-303, there is hereby imposed, levied, assessed and shall be collected, as hereinafter provided, an excise or privilege tax upon each person engaged or continuing in the business of wholesaler or distributor of light wines, light spirit products or beer equivalent to Forty-two and Sixty-eight One-hundredths Cents (42.68¢) per gallon upon all light wines, light spirit products and beer acquired for sale or distribution in this state. The excise or privilege tax is also imposed at the same rate upon each gallon of light wine, light spirit product or beer manufactured by brewpubs, each of which shall accurately and reliably measure the quantity of light wine, light spirit product and beer produced by using a measuring device such as a meter or gauge glass or any other suitable method approved by the commissioner. The excise or privilege tax is also imposed at the same rate upon each gallon of light wine, light spirit product or beer provided by a small craft brewery for sale as authorized under Section 67-3-48 and upon each gallon of light wine, light spirit product or beer provided for tasting or sampling under Section 67-3-47. The tax is hereby imposed as an additional tax for the privilege of engaging or continuing in business.

(b) The excise tax imposed in this section shall be paid to the Department of Revenue monthly on or before the fifteenth day of the month following the month in which the beer, light spirit product or light wine was manufactured or received in this state. Monthly report forms shall be furnished by the commissioner to the wholesalers, distributors, brewpubs and small craft breweries.

(c) Provided that persons operating a railroad dining car, club car or other car in interstate commerce upon which light wines, light spirit products or beer may be sold and who are licensed under the provisions of Section 67-3-27 and any other law relating to the sale of such beverages shall keep such records of the sales of such light wines, light spirit products and beer in this state as the commissioner shall prescribe and shall submit monthly reports of such sales to the commissioner within fifteen (15) days after the end of each month on a form prescribed therefor by the commissioner, and shall pay the tax due under the provisions of this section at the time such reports are filed.

No official crowns, lids, labels or stamps with the word "MISSISSIPPI" or "MS" imprinted thereon or any other evidence of tax payment is required by this section, or may be required under rule or regulation promulgated by the commissioner, to be affixed on or to any part of a beer, light wine, light spirit product or malt cooler bottle, can or other light wine, light spirit product or malt cooler container. For purposes of this section, malt cooler products shall be defined as a flavored malt beverage made from a base of malt beverage and flavored with fruit juices, aromatics and essences of other flavoring in quantities and proportions such that the resulting product possesses a character and flavor distinctive from the base malt beverage and distinguishable from other malt beverages.

(2) A licensed wholesaler or distributor of beer, light spirit product or light wine may not import beer, light spirit product or light wine from any source other than a brewer or importer authorized by the commissioner to sell such beer, light spirit product or light wine in Mississippi. Any person who violates the provisions of this subsection, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court and shall be subject to license forfeiture following an appropriate hearing before the Department of Revenue.

(3) The wholesaler, distributor or small craft brewery shall be allowed credit for tax paid on beer, light spirit product or light wine which is no longer marketable and which is destroyed by same when such destruction is witnessed by an agent of the commissioner and when the amount of the excise tax exceeds One Hundred Dollars ($100.00). No other loss will be allowed.

A brewpub shall be allowed credit for light wine, light spirit product or beer which has passed through the meter, gauge glass or other approved measuring device and which has been soured or damaged. The brewpub shall record the removal of sour or damaged light wine, light spirit product or beer and may take credit after the destruction is witnessed by an agent of the commissioner and when the amount of excise tax exceeds Twenty-five Dollars ($25.00). No other loss shall be allowed.

(4) All manufacturers, brewers and importers of beer, light spirit product or light wine shall file monthly reports as prescribed by the commissioner listing sales to each wholesaler or distributor by date, invoice number, quantity and container size, and any other information deemed necessary.

(5) All small craft breweries shall file monthly reports as prescribed by the commissioner regarding the sale of light wine, light spirit product or beer authorized under Section 67-3-48.

(6) Manufacturers who offer and provide limited amounts of beer for tasting or sampling under Section 67-3-47 shall file monthly reports as prescribed by the commissioner regarding the beer provided for such tasting or sampling.

(7) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the sales tax law except where there is conflict, then the provisions of this chapter shall control.

HISTORY: Codes, 1942, § 10242; Laws, 1934, ch. 127; Laws, 1938, Ex. Sess, ch. 21; Laws, 1942, ch. 140; Laws, 1950, ch. 540; Laws, 1985, ch. 351, § 26; Laws, 1985, ch. 475; Laws, 1986, ch. 337, § 1; Laws, 1989, ch. 388, § 1; Laws, 1994, ch. 426, § 1; Laws, 1997, ch. 499, § 3; Laws, 1998, ch. 308, § 3; Laws, 1998, ch. 466, § 3; Laws, 2000, ch. 435, § 1; Laws, 2017, ch. 345, § 9, eff from and after July 1, 2017; Laws, 2020, ch. 314, § 50, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit product" and "light spirit products" everywhere they appear.

§ 27-71-311. Bond required of manufacturer, wholesaler and brewpub.

Before any person shall engage in the business of manufacturing light wines, light spirit products or beer, in the business of wholesaler or distributor of light wines, light spirit products or beer, or in the business of a brewpub, he shall be required to enter into a good and sufficient bond. The bond shall be made payable to the State of Mississippi, in a sum of not less than Five Thousand Dollars ($5,000.00) nor more than Two Hundred Thousand Dollars ($200,000.00), the amount to be determined by the Department of Revenue. The bond of a wholesaler, distributor or brewpub shall not exceed the amount of excise tax estimated to be owed by such wholesaler, distributor or brewpub for any sixty-day period. If a manufacturer is operating a small craft brewery and is distributing light wine, light spirit product or beer for sale as authorized under Section 67-3-48, the manufacturer, in addition to any other required bond, shall enter into a bond not to exceed the amount of excise tax estimated to be owed by such manufacturer for any sixty-day period. The bond shall be conditioned that he will conduct his business strictly in accordance with the laws of the State of Mississippi, and that he will comply with the rules and regulations prescribed by the commissioner, and pay the taxes imposed under the provisions of this article for the privilege of engaging or continuing in such business. Such bond shall be made in a surety company authorized to do business in the State of Mississippi, and shall be approved by the commissioner. The commissioner shall be authorized to institute suit in the proper court on said bond for any violation of the conditions of said bond.

HISTORY: Codes, 1942, § 10244; Laws, 1934, ch. 127; Laws, 1991, ch. 368, § 1; Laws, 1998, ch. 308, § 4; Laws, 2017, ch. 345, § 10, eff from and after July 1, 2017; Laws, 2020, ch. 314, § 51, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit product" and "light spirit products" everywhere they appear; and substituted "Department of Revenue" for "State Tax Commission."

§ 27-71-315. Transportation from without the state.

Except as otherwise provided in Section 67-9-1 for the transportation of limited amounts of alcoholic beverages for the use of an alcohol processing permittee, it shall be unlawful for any person to transport from any point outside of this state to any point within this state, any light wines, light spirit products or beer except for delivery to a licensed wholesaler or distributor in this state; and except by common carrier. The commissioner may, however, upon application of a licensed wholesaler or distributor in this state, and under rules and regulations duly promulgated by him, issue a permit for the transportation by a licensed wholesaler or distributor of light wines, light

spirit products and beer in trucks owned by such licensee, from without the state to the place of business of such licensee within the state, for distribution by said licensee. Such permit shall be granted for a specified period, not to exceed one (1) year.

Any person engaged in transporting any light wines, light spirit products or beer from any point outside of this state to any point within this state, shall have in his possession during the entire time he is engaged in transporting such light wines, light spirit products or beer, an invoice, bill of sale, or bill of lading, showing the true name and address of the consignor, and also the true name and address of the licensed wholesaler or distributor to whom such light wines, light spirit products or beer is to be delivered, and the quantity of such light wines, light spirit products or beer, unless such common carrier maintains a permanent office within this state where complete records of all light wines, light spirit products or beer transported from without this state to points within this state are kept, and open to inspection by the commissioner or his duly authorized agent, at all reasonable times.

It is hereby made the duty of all common carriers, and licensed wholesalers and distributors, transporting light wines, light spirit products or beer from without the State of Mississippi into the State of Mississippi, to furnish the commissioner on or before the fifteenth day of each month, a report showing the amount of beer transported within the state during the preceding month, the consignor, the consignee, and the quantity of light wines, light spirit products or beer so transported.

HISTORY: Codes, 1942, § 10247; Laws, 1934, ch. 127; Laws, 1938, Ex. Sess, ch. 21; Laws, 1942, ch. 139; Laws, 1996, ch. 417, § 4, eff from and after July 1, 1996; Laws, 2020, ch. 314, § 52, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit products" everywhere it appears.

§ 27-71-317. Transportation within the state.

It shall be unlawful for any person to transport from any point within this state to another point within this state, any light wines, light spirit products or beer, on which the tax imposed in Section 27-71-307 of this article has not been paid, except for immediate delivery to a licensed wholesaler or distributor in this state. And any person engaged in transporting any light wines, light spirit products or beer, on which the tax imposed in Section 27-71-307 of this article has not been paid, from any point within this state to another point within this state shall have in his possession during the entire time he is engaged in transporting such light wines, light spirit products or beer an invoice, bill of sale, or bill of lading showing the true name and address of the consignor, and also the true name and address of the licensed wholesaler or distributor to whom such light wines, light spirit products or beer is to be delivered and the quantity of such light wines, light spirit products or beer.

HISTORY: Codes, 1942, § 10248; Laws, 1934, ch. 127; Laws, 2020, ch. 314, § 53, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit products" everywhere it appears.

§ 27-71-325. Reports of wholesaler and preservation of invoices.

It shall be the duty of every wholesaler or distributor of light wines, light spirit products or beer licensed under the provisions of Section 67-3-27, Mississippi Code of 1972, to file with the commissioner, on or before the fifteenth day of each month, a report covering all sales of such light wines, light spirit products or beer during the preceding month. Such report shall show the names and post-office addresses of all persons to whom such light wines, light spirit products or beer have been sold or delivered and the quantities and invoice prices of the light wines, light spirit products or beer thus sold or delivered.

It shall be the duty of each retail dealer in such light wines, light spirit products or beer to procure from the distributor or wholesaler from whom such light wines, light spirit products or beer were purchased or acquired, invoices showing the quantity of the light wines, light spirit products or beer purchased or acquired, and the date of each delivery thereof. Such invoices shall be preserved by the retailer and shall be open for inspection by the commissioner or his duly authorized agent for a period of two (2) years. It shall likewise be the duty of such retail dealer to file with the commissioner, on or before the fifteenth day of each calendar month, a report showing all purchases of such light wines, light spirit products or beer made by him during the preceding month. Such report shall disclose the names and addresses of all persons from whom such light wines, light spirit products or beer have been purchased or received by him during the preceding month and the quantities thus purchased or received.

HISTORY: Codes, 1942, § 10252; Laws, 1934, ch. 127; Laws, 2020, ch. 314, § 54, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit products" everywhere it appears; and deleted "(15th)" following "fifteenth" twice.

§ 27-71-327. Records to be maintained.

Any person engaged in the business of manufacturer, distributor, wholesaler or retailer of light wines, light spirit products or beer and any brewpub shall keep such additional records and make such additional reports with respect to the manufacture, receipt, distribution and sale of such light wines, light spirit products or beer as the commissioner may require. It shall be the duty of the commissioner to prescribe and promulgate uniform rules and regulations for keeping such records and making such reports.

HISTORY: Codes, 1942, § 10253; Laws, 1934, ch. 127; Laws, 1998, ch. 308, § 5,

eff from and after July 1, 1998; Laws, 2020, ch. 314, § 55, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit products" everywhere it appears.

§ 27-71-331. Penalty.

If any manufacturer, wholesaler, distributor, brewpub or small craft brewery, subject to the provisions of this article, shall fail to pay any tax due under the provisions of this article, within the time, and in the manner, herein provided, the commissioner is authorized to assess, and collect, such tax, together with interest thereon from the date such tax became due at the rate of one-half of one percent (1/2 of 1%) per month, and in addition to the amount of the tax due and the interest accrued thereon, the commissioner may, in his discretion, assess and collect, from such delinquent taxpayer, a penalty equal to the amount of the tax found to be due.

HISTORY: Codes, 1942, § 10255; Laws, 1934, ch. 127; Laws, 1986, ch. 337, § 2; Laws, 1997, ch. 499, § 5; Laws, 1998, ch. 308, § 6; Laws, 2000, ch. 435, § 3; Laws, 2017, ch. 345, § 11, eff from and after July 1, 2017; Laws, 2020, ch. 372, § 9, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment substituted "one-half of one percent (1/2 of 1%)" for "one percent (1%)."

§ 27-71-333. Assessment and collection of penalty.

Whenever it shall be determined by the commissioner that any wholesaler or distributor having in his possession, or engaging in the sale or distribution of light wines, light spirit products or beer, has failed to pay the tax, as provided herein, the commissioner shall compute the correct amount of tax due and unpaid and shall notify the taxpayer of the amount as being actually due and unpaid, and penalties, and interest and shall state in what manner this article is violated. The taxpayer so notified shall be given a period of ten (10) days in which to make objection and show cause why the additional tax, and penalties, and interest, should not be paid. On petition of the taxpayer, a hearing before the commissioner shall be granted, a final decision thereon shall be rendered, and the taxpayer notified as early as practicable. Any tax or deficiency in tax shall be assessed and paid, together with penalties and interest, if any, applicable thereto, within ten (10) days after notice and demand by the commissioner.

If no objection be made to the finding of the commissioner, and no hearing be had before the commissioner within the time herein specified, the findings of the commissioner shall be final. If a hearing be had, and the amount of tax due and unpaid be determined, notice of the amount of such tax, penalties and interest shall be mailed to the taxpayer, and, if not paid within ten (10) days thereafter, the commissioner shall forthwith issue a warrant under official seal directed to the sheriff of any county of the state commanding him to levy upon

and sell the real and personal property of the person owing the tax, found within his county, for the payment of the amount thereof, with added damages, interest and cost of executing the warrant, and to return such warrant to the commissioner and pay to him money collected by virtue thereof by a time to be therein specified not more than sixty (60) days from the date of the warrant. The sheriff shall, within five (5) days after the receipt of the warrant, file with the circuit clerk of his county a copy thereof, and thereupon the circuit clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax, or portion thereof and damages for which the warrant is issued, and the date when such copy is filed; and thereupon the amount of such warrant or warrants so docketed shall become a lien upon the title to and interest in the real and personal property, including choses in action, of the person against whom it is issued in the same manner as a judgment duly enrolled in the office of such clerk. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment or attachment proceedings of a court of record; and he shall be entitled to the same fee for his service in executing the warrant as now allowed by law for like service, to be collected in the same manner as provided by law for like service.

HISTORY: Codes, 1942, § 10256; Laws, 1934, ch. 127; Laws, 1986, ch. 337, § 3; Laws, 1997, ch. 499, § 6; Laws, 2000, ch. 435, § 4, eff from and after July 1, 2000; Laws, 2020, ch. 314, § 56, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit products" in the first paragraph.

§ 27-71-335. Tax and penalty upon contraband light wine, light spirit product and beer; confiscation.

Any light wines, light spirit products or beer found at any point within this state which has been in the possession of any wholesaler or distributor for a period of more than forty-eight (48) hours and any light wines, light spirit products or beer transported into this state from a point outside this state, or from point-to-point within this state in violation of the provisions of this article, or any light wines, light spirit products or beer held or possessed by any person within this state on which the legal and proper tax has not been paid when due, whether such person be a wholesaler, retailer or distributor, or individual, and whether the light wines, light spirit products or beer be for sale or storage or individual use, except light wines, light spirit products or beer in possession of a licensed wholesaler or distributor for a period of time less than forty-eight (48) hours after receipt of the light wines, light spirit products or beer within this state, and light wines, light spirit products or beer held in storage by licensed manufacturers or producers, are hereby declared to be contraband goods, and there is hereby imposed and assessed, as tax and penalty, to be collected by the commissioner, an amount equal to the amount of the excise tax otherwise imposed under the Mississippi Wine and Beer Tax

Law, plus a penalty of one hundred percent (100%) of the amount of the tax; or, at the option of the commissioner, the light wines, light spirit products or beer may be seized by the commissioner or his agents or any sheriff, or other lawful officer, and shall be dealt with in the same manner as provided for in Section 67-1-18 for alcoholic beverages.

HISTORY: Codes, 1942, § 10258; Laws, 1934, ch. 127; Laws, 1958, ch. 579, § 1; Laws, 1962, ch. 334, § 1; Laws, 1986, ch. 337, § 4; Laws, 1997, ch. 499, § 7; Laws, 2000, ch. 435, § 5; Laws, 2015, ch. 438, § 1, eff from and after passage (approved Apr. 13, 2015); Laws, 2020, ch. 314, § 57, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit products" everywhere it appears.

§ 27-71-345. Privilege tax to be levied by municipality.

Any municipality, in which any business licensed under the provisions of Section 67-3-27, Mississippi Code of 1972, may be carried on, shall have the right to impose upon persons engaged in such business an annual privilege tax of not more than fifty percent (50%) of the tax imposed by Section 27-71-303 of this article, and any county, in which any business licensed under the provisions of Section 67-3-27, Mississippi Code of 1972, may be carried on outside of the territory taxed by municipalities, shall have the right to impose upon persons engaged in such business an annual privilege tax of not more than fifty percent (50%) of the tax imposed by Section 27-71-303 of this article; provided, however, that no person engaged in the business of manufacturer, brewpub, wholesaler or distributor of light wines, light spirit products or beer shall be taxed by any municipality other than that in which the warehouse or plant of such wholesaler or distributor, or the premises of such brewpub, is located, nor shall any county impose any such tax upon such manufacturer, brewpub, wholesaler or distributor of light wines, light spirit products or beer if the place of business is located within the jurisdiction of any municipality.

HISTORY: Codes, 1942, § 10263; Laws, 1934, ch. 127; Laws, 1948, ch. 458, § 2; Laws, 1998, ch. 308, § 7, eff from and after July 1, 1998; Laws, 2020, ch. 314, § 58, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit products" twice.

§ 27-71-349. Designation of sales territories for sale of light wine, light spirit product and beer by manufacturers and importers; presentation of light wine, light spirit product or beer to retailers by licensed wholesalers; transportation of light wine, light spirit product or beer; deliveries to retailers; sales by wholesalers to retailers in territories of other wholesalers; purchases for resale.

(1) Every manufacturer or importer of light wine, light spirit product or

beer shall designate sales territories for each of its brands sold in Mississippi and shall name one (1) licensed light wine, light spirit product or beer wholesaler in each territory who, within such territory, shall be the licensed wholesaler for the brand or brands assigned by the manufacturer or importer. If the manufacturer or importer supplies more than one (1) brand, sales territories may be granted to a different wholesaler for the sale of each brand. No licensed wholesaler shall distribute the specified brand or brands of light wine, light spirit product or beer outside his assigned territory, nor shall he knowingly sell to a retailer whose licensed retail establishment is located outside his assigned territory.

(2) A licensed wholesaler designated as the licensed wholesaler for light wine, light spirit product or beer within a designated sales territory shall present that light wine, light spirit product or beer for sale to all licensed retailers within the designated sales territory without discrimination in service. A licensed wholesaler shall not sell, supply or deliver, either directly or indirectly through a third party, any light wine, light spirit product or beer to a licensed retailer outside of the designated sales territory of the designated wholesaler, nor to any person the licensed wholesaler has reason to believe will sell or supply any quantity of the light wine, light spirit product or beer to any retail location outside of the designated sales territory of the licensed wholesaler.

(3) All light wines, light spirit products or beer shall be transported only by a marked conveyance owned or leased by the licensed wholesaler and operated by the licensed wholesaler or an employee of the wholesaler for the products of a manufacturer or importer within the designated sales territory to the address and location of a licensed retail dealer within that designated sales territory.

(4) Any light wine, light spirit product or beer sold by the licensed wholesaler shall not be delivered to, received by or stored at any place other than the address and location of the licensed retailer for which the required licenses and permits have been issued.

(5) With the approval of the designated manufacturer, a licensed wholesaler may sell the designated brands to a licensed retailer located in a designated sales territory of another licensed wholesaler if the former licensed wholesaler is unable temporarily for any reason to provide the designated brands of the designated manufacturer within its designated sales territory.

(6) All light wine, light spirit product or beer purchased by a licensed wholesaler for resale in this state shall come into the physical possession of the licensed wholesaler and be unloaded in and distributed from the warehouse of the licensed wholesaler located in this state before being resold in this state.

(7) As used in this section, the term "sales territory" shall have the meaning ascribed to such term in Section 67-7-5.

HISTORY: Laws, 1995, ch. 619, § 13, eff from and after passage (approved April 7, 1995); Laws, 2020, ch. 314, § 59, eff from and after passage (approved June 18, 2020).

Amendment Notes — The 2020 amendment, effective June 18, 2020, inserted "light spirit product" and "light spirit products" everywhere they appear.

ARTICLE 5.
BREWERIES.

Sec.
27-71-509. Labels.

§ 27-71-509. Labels.

It shall be unlawful for any brewer, manufacturer, distributor or retailer of light wines, light spirit products or beer to whom a permit has been issued under the provisions of Sections 67-3-15 and 67-3-23, Mississippi Code of 1972, to write or print on any label or container of either of the above-named commodities any matter relating to the alcoholic content of such beverage or beverages, except a statement, to the effect that the contents of the vessel or container in which light wine shall be sold does not contain alcohol in excess of five percent (5%) of the contents thereof, by weight, that the contents of the vessel or container in which light spirit product shall be sold does not contain alcohol in excess of four percent (4%) of the contents thereof, by weight, and that the contents of the vessel or container in which beer shall be sold does not contain alcohol in excess of eight percent (8%) of the contents thereof, by weight. It shall be unlawful for any such brewer, wholesaler, distributor or retailer to sell any such commodity with any statement in conflict with the provisions of this section, with reference to the alcoholic content of such beverage or beverages, except that a statement of alcoholic content may be expressed on any light wine, light spirit product or beer label in terms of volume or weight, at the manufacturer's option; and such statement, if by volume, shall be subject to the same permitted tolerance allowed for wine containing fourteen percent (14%) alcohol by volume or less by Section 4.36(b)(1) of the Federal Labeling Requirements for Wine, 27 CFR Part 4, subpart D, and Section 7.71(c) 27 CFR Part 7, subpart G, and, if by weight, shall be subject to an equivalent permitted tolerance, determined in terms of alcohol by weight.

HISTORY: Codes, 1942, § 10234; Laws, 1934, ch. 128; Laws, 1986, ch. 337, § 6; Laws, 1987, ch. 355, § 1; Laws, 1998, ch. 306, § 1; Laws, 2012, ch. 323, § 12, eff from and after July 1, 2012; Laws, 2020, ch. 314, § 60, eff from and after passage (approved June 18, 2020).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the beginning of this section by substituting "or" for "and" following "light wines, light spirit products" and by deleting "or either of them" preceding "to whom a permit." Section 60 of Chapter 314, Laws of 2020, failed to delete "or either of them" following "beer" when a third alcoholic product was added to the list of two alcoholic products. The Joint Committee ratified the corrections at its October 19, 2020, meeting.

Amendment Notes — The 2020 amendment, effective June 18, 2020, in the first sentence, inserted "light spirit products" near the beginning, and inserted "that the contents of the vessel...of the contents thereof, by weight"; and inserted "light spirit product" in the last sentence.

CHAPTER 73.

TAX REFUNDS

§ 27-73-7. Erroneous tax payments refunded.

JUDICIAL DECISIONS

1. In general.

Taxpayer did not show that the county board of supervisors' decision to deny its petition for a refund of taxes it paid on lots in a subdivision was arbitrary and capricious because the board reasonably could have found that the assessor determined that the taxpayer had intended to place the lots for sale; the assessor produced evidence on how the properties were assessed and valued, no record evidence showed that the taxpayer objected to assessment until years after they were finalized. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

CHAPTER 77.

APPELLATE REVIEW FOR TAXPAYERS AGGRIEVED BY CERTAIN ACTIONS OF THE DEPARTMENT OF REVENUE

Sec.

27-77-5. Appeals from Department of Revenue actions; appeal must be in writing; notice and hearing; appeal to Board of Tax Appeals from decision of board of review; hearing before Board of Tax Appeals; withdrawal of appeal.

§ 27-77-1. Definitions.

JUDICIAL DECISIONS

1. Mail.

Allegations contained in the pleadings failed to support a taxpayer's claim that the Department of Revenue (DOR) violated its due process rights by failing to notify it of the Board of Review hearing because the DOR provided notice reasonably calculated to notify the taxpayer of the hearing and afford it an opportunity to dispute the assessment; the DOR was not required to send notice by certified mail, and the taxpayer's failure to receive a notice was due to its law firm's computer system. Enscor, LLC v. Morgan, 269 So. 3d 403, 2018 Miss. App. LEXIS 244 (Miss. Ct. App. 2018).

§ 27-77-5. Appeals from Department of Revenue actions; appeal must be in writing; notice and hearing; appeal to Board of Tax Appeals from decision of board of review; hearing before Board of Tax Appeals; withdrawal of appeal.

(1) Any taxpayer aggrieved by an assessment of tax by the agency, by the agency's denial of a refund claim, by the denial of a waiver of tag penalty, or the denial of a claim to tax credits or incentives, and who wishes to contest the action of the agency shall, within sixty (60) days from the date the agency mailed or delivered written notice of the action, file an appeal in writing with the Board of Review requesting a hearing and correction of the contested action specifying in detail the relief requested and any other information that might be required by regulation. Even after an appeal is filed with the Board of Review, the agency retains the authority to change the assessment, the denial of refund claim or the denial of tag penalty being appealed.

(2) Upon receipt of a timely written appeal from a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, a hearing shall be scheduled before the Board of Review unless it is determined that the relief requested in the written appeal should be granted without a hearing. A notice of the hearing shall be mailed to the taxpayer advising the taxpayer of the date, time and location of the hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to, and granted by, the Board of Review to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the Board of Review or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(3) At a hearing before the Board of Review on a tax assessment, denial of refund claim, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, the Board of Review shall try the issues presented, according to law and the facts and within the guidelines established by regulation. The hearing before the Board of Review shall be informal and no official transcript will be made of the hearing. At the earliest practical date after the hearing, the members of the Board of Review that heard the appeal shall make a determination on the matter presented and notify the taxpayer of its findings by mailing a copy of its order to the taxpayer. If the order involves the appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty. If in the order the Board of Review orders the taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date the Board of Review mailed the order, pay the amount ordered to be paid or appeal the order of the Board of Review to the Board of Tax Appeals. After the sixty-day period, if an appeal is not filed by the taxpayer with the Executive Director of the Board of Tax Appeals and the tax determined by the Board of Review is not paid, the agency

shall proceed to collect the tax assessment as determined by the Board of Review.

(4) Any taxpayer aggrieved by an order of the Board of Review affirming a tax assessment, the denial of a refund claim, the denial of a waiver of tag penalty, or the denial of a claim to tax credits or incentives, and who wishes to contest the order shall, within sixty (60) days from the date the Board of Review mailed the order being contested, file an appeal to the Board of Tax Appeals. The appeal shall be in writing and shall request a hearing and reversal or modification of the order of the Board of Review, specify in detail the relief requested and contain any other information that might be required by regulation, and be filed with the executive director. At the time of filing his appeal with the executive director, the taxpayer shall also file a copy of his written appeal with the Board of Review. Even after an appeal is filed with the Executive Director of the Board of Tax Appeals, the Board of Review retains the authority to amend and/or correct the order being appealed at any time prior to a decision by the Board of Tax Appeals on the appeal. Failure to timely file a written appeal with the executive director within the sixty-day period shall make the order of the Board of Review final and not subject to further review by the Board of Tax Appeals or a court, other than as to the issue of whether a written appeal from the order of the Board of Review was timely filed with the executive director. If the Board of Review shall not issue an order within six (6) months of a hearing, the taxpayer may treat the failure to issue an order as a denial of the relief requested in the hearing and appeal such deemed denial to the Board of Tax Appeals as provided in this section. A taxpayer's filing or failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal with the Board of Tax Appeals upon the Board of Review's issuance of a subsequent order in the manner provided for in this section.

(5) Upon receipt of a written appeal from an order of the Board of Review affirming a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, the executive director shall schedule a hearing before the Board of Tax Appeals on the appeal. A notice of this hearing shall be mailed to the taxpayer and the agency advising them of the date, time and location of hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to and granted by the Executive Director of the Board of Tax Appeals to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the executive director or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(6)(a) At any hearing before the Board of Tax Appeals on an appeal of an order of the Board of Review affirming a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing, the Board of Tax Appeals shall conduct a hearing

on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions of the Department of Revenue being appealed, according to the law and the facts and pursuant to any procedural guidelines established by regulation.

(b) At a hearing of any action brought under this section, the Board of Tax Appeals shall give no deference to the decision of the Board of Review, but shall give deference to the department's interpretation and application of the statutes as reflected in duly enacted regulations and other officially adopted publications. The Board of Tax Appeals shall conduct a hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions being appealed. The Board of Tax Appeals shall decide all factual and legal questions presented, including those as to legality and the amount of tax or refund due as well as whether and to what extent the imposition of interest and/or penalties is warranted under the facts of the case, and if it finds that the tax assessment, denial of refund claim or other action of the agency in issue is incorrect or invalid, in whole or in part, it shall determine the amount of tax or refund due, including interest and, if applicable, penalty to date, and enter such order or judgment as it deems proper. Interest and penalty included in this determination shall be computed by the Board of Tax Appeals based on the methods for computing penalty and interest as specified by law for the type of tax in issue, and the Board of Tax Appeals shall have the same discretion as the commissioner in determining whether and to what extent such amounts are warranted under the facts of the case. The rules of evidence shall be relaxed at the hearing.

(c) Any appeal to chancery court from an order of the Board of Tax Appeals resulting from this type of hearing shall include a full evidentiary judicial hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the department's action being appealed. No official transcript shall be made of this hearing before the Board of Tax Appeals.

(d) After reaching a decision on the issues presented, the Board of Tax Appeals shall enter its order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the taxpayer and the agency. If the order involves an appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty.

(e) If the Board of Tax Appeals shall not issue an order within nine (9) months of a hearing, the taxpayer may treat the failure to issue an order as a denial of the relief requested in the hearing and appeal such deemed denial to the chancery court as provided in Section 27-77-7. A taxpayer's filing or failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal with the chancery court upon the Board of Tax Appeals' issuance of a subsequent order in the manner provided for in Section 27-77-7.

(7) If in its order the Board of Tax Appeals orders a taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date the Board

of Tax Appeals mailed the order, pay the amount ordered to be paid or properly appeal the order of the Board of Tax Appeals to chancery court as provided in Section 27-77-7. During the sixty (60) days after the date the Board of Tax Appeals mailed the order, if the taxpayer provides additional documentation or information, the commissioner may further reduce the amount due by the taxpayer. The commissioner shall have thirty (30) days from the date the taxpayer mails or otherwise provides in writing the additional documentation or information to issue a determination, during which the sixty-day appeal period provided in Section 27-77-7 is tolled. If the commissioner issues a determination in less than thirty (30) days, the appeal period shall begin to run again at the time of the written notice of the commissioner's determination. Written notice by the commissioner shall indicate that the sixty-day appeal period has begun to run again as of the date of the notice, and shall provide the taxpayer the date on which the appeal period will expire. After the sixty-day period, if the tax determined by the Board of Tax Appeals or the reduced amount determined by the commissioner to be due is not paid and an appeal from the Board of Tax Appeals order has not been properly filed, the agency shall proceed to collect the tax assessment as affirmed by the Board of Tax Appeals or reduced by the commissioner. If in its order the Board of Tax Appeals determines that the taxpayer has overpaid his taxes and an appeal from the Board of Tax Appeals order has not been properly filed in chancery court, the agency shall, within sixty (60) days from the date the Board of Tax Appeals mailed its order, refund or credit to the taxpayer, as provided by law, the amount of overpayment as determined and set out in the order.

(8) At any time after the filing of an appeal to the Board of Review or from the Board of Review to the Board of Tax Appeals under this section, an appeal can be withdrawn. Such a withdrawal of an appeal may be made voluntarily by the taxpayer or may occur involuntarily as a result of the taxpayer failing to appear at a scheduled hearing, failing to make a written submission or electronic transmission in lieu of attendance at a hearing by the date specified or by the hearing date, if no date was specified, or by any other act or failure that the Board of Review or the Board of Tax Appeals determines represents a failure on the part of the taxpayer to prosecute his appeal. Any voluntary withdrawal shall be in writing or by electronic transmission and sent by the taxpayer or his designated representative to the chairman of the Board of Review, if the appeal being withdrawn is to the Board of Review, or to the executive director, if the appeal being withdrawn is to the Board of Tax Appeals. If the withdrawal of appeal is involuntary, the administrative appeal body from whom the appeal is being withdrawn shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn, whether voluntary or involuntary, the action from which the appeal was taken, whether a tax assessment, a denial of refund claim, a denial of waiver of tax penalty, or the denial of a claim to tax credits or incentives, or an order of the Board of Review, shall become final and not subject to further review by the Board of Review, the Board of Tax Appeals or a court, other than as to the issue of whether a taxpayer's actions or inactions

constituted a failure on the part of the taxpayer to prosecute his appeal. The agency shall then proceed in accordance with law based on such final action.

(9) Nothing in this section shall bar a taxpayer from timely applying to the commissioner as otherwise provided by law for a tax refund or for a revision in tax.

(10) Any appeal or other filing with the Board of Review or Board of Tax Appeals pursuant to this section shall be considered timely if it is hand delivered during the regular office hours of the recipient by the due date of such filing, or if it is mailed, postmarked or shipped by such due date. Any appeal or other filing to the Board of Review or Board of Tax Appeals pursuant to this section shall also be considered timely if electronically transmitted via electronic mail, electronic filing or facsimile by midnight of the due date for such filing. The timeliness of such electronic filing shall be determined in all instances based on the local time zone of the recipient. If the due date for any appeal or other filing with the Board of Review or Board of Tax Appeals should fall on a Saturday, Sunday, official state holiday, or other day on which the Department of Revenue or Board of Tax Appeals is closed, the due date for the filing shall be the next business day in which the Department of Revenue or Board of Tax Appeals is open.

HISTORY: Laws, 2005, ch. 499, § 3; Laws, 2009, ch. 492, § 114; Laws, 2014, ch. 476, § 16, effective from and after January 1, 2015; Laws, 2020, ch. 448, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (7), added the second through fifth sentences, and in the sixth sentence, added "or the reduced amount determined by the commissioner" and "or reduced by the commissioner."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Injunctive relief.
5. Appeal untimely.

1. In general.

Allegations contained in the pleadings failed to support a taxpayer's claim that the Department of Revenue (DOR) violated its due process rights by failing to notify it of the Board of Review hearing because the DOR provided notice reasonably calculated to notify the taxpayer of the hearing and afford it an opportunity to dispute the assessment; the DOR was not required to send notice by certified mail, and the taxpayer's failure to receive a notice was due to its law firm's computer system. Enscor, LLC v. Morgan, 269 So. 3d 403, 2018 Miss. App. LEXIS 244 (Miss. Ct. App. 2018).

Chancery court properly dismissed a taxpayer's action against the Mississippi Department of Revenue (DOR) because the taxpayer failed to produce sufficient evidence to survive the DOR's motion for summary judgment; the taxpayer failed to demonstrate the existence of a genuine issue of material fact that its due-process rights were violated. Enscor, LLC v. Morgan, 269 So. 3d 403, 2018 Miss. App. LEXIS 244 (Miss. Ct. App. 2018).

2. Injunctive relief.

Chancery court erred in finding a taxpayer had an adequate remedy at law because the taxpayer properly alleged an inadequate remedy at law, and no adequate remedy at law was available to review the involuntary withdrawal of its appeal; the 2010 version of subsection (8) precluded the taxpayer from appealing

the tax assessment and deprived the Mississippi Board of Tax Appeals from jurisdiction over the appeal. Enscor, LLC v. Morgan, 269 So. 3d 403, 2018 Miss. App. LEXIS 244 (Miss. Ct. App. 2018).

5. Appeal untimely.

Taxpayer's contest of a Mississippi Department of Revenue assessment was properly dismissed because a reviewing trial court did not have jurisdiction, as the taxpayer did not exhaust administrative remedies since (1) the taxpayer did not timely seek review after an audit assessment was mailed to the taxpayer, and (2) the record did not support the taxpayer's claim that the taxpayer did not have notice of appellate rights. Rucker v. Miss. Dep't of Revenue, 281 So. 3d 253, 2019 Miss. App. LEXIS 115 (Miss. Ct. App. 2019).

§ 27-77-7. Judicial review of Board of Tax Appeals' findings and order; petition; surety bond; payment under protest in lieu of bond; payment of uncontested tax by taxpayer; payment of uncontested overpayment by agency; issuance of summons; trial; appeals of chancery court order to Supreme Court.

JUDICIAL DECISIONS

ANALYSIS

2. Tax appeal.
3. Constitutionality

2. Tax appeal.

Chancery court properly dismissed the taxpayers' appeal of a decision by Board of Tax Appeals (BTA) for lack of jurisdiction because the statutory time for filing an appeal was within the 60-day time frame without any extension for mailing, and the taxpayers filed their petition 61 days after the BTA mailed the order. Epps v. Frierson, — So. 3d —, 2020 Miss. App. LEXIS 305 (Miss. Ct. App. May 19, 2020).

Taxpayer's contest of a Mississippi Department of Revenue assessment was properly dismissed because a reviewing trial court did not have jurisdiction, as the taxpayer did not exhaust administrative remedies since (1) the taxpayer did not timely seek review after an audit assessment was mailed to the taxpayer, and (2) the record did not support the taxpayer's claim that the taxpayer did not have notice of appellate rights. Rucker v. Miss. Dep't of Revenue, 281 So. 3d 253, 2019 Miss. App. LEXIS 115 (Miss. Ct. App. 2019).

Chancery court properly dismissed the taxpayer's appeal due to failure to comply with the bond requirement under the statute; he could have availed himself of the opportunity to file a motion for a reduction or waiver of the bond, but he did not, and his first attempt at posting his bond was six months after filing his notice of appeal. Almasri v. Miss. Dep't of Revenue, 282 So. 3d 698, 2019 Miss. App. LEXIS 368 (Miss. Ct. App. 2019).

Chancery court erred in finding a taxpayer had an adequate remedy at law because the taxpayer properly alleged an inadequate remedy at law, and no adequate remedy at law was available to review the involuntary withdrawal of its appeal; the 2010 version of subsection (8) precluded the taxpayer from appealing the tax assessment and deprived the Mississippi Board of Tax Appeals from jurisdiction over the appeal. Enscor, LLC v. Morgan, 269 So. 3d 403, 2018 Miss. App. LEXIS 244 (Miss. Ct. App. 2018).

3. Constitutionality

Chancellor erred in giving deference to the agencies statutory interpretations because the statutorily-mandated deferential review violated the separation of powers doctrine and was unconstitutional. HWCC-Tunica, Inc. v. Miss. Dep't of Revenue, 296 So. 3d 668, 2020 Miss. LEXIS 233 (Miss. 2020).

Taxpayer's failure to raise the issue of the constitutionality of the statute before

the trial court and to notify the Attorney General rendered the issue procedurally barred. Almasri v. Miss. Dep't of Revenue, 282 So. 3d 698, 2019 Miss. App. LEXIS 368 (Miss. Ct. App. 2019).

CHAPTER 103.

STATE BUDGET

Mississippi Performance Budget and Strategic Planning Act of 1994. 27-103-151
Budget Contingency and Capital Expense Funds. 27-103-301

JOINT LEGISLATIVE BUDGET COMMITTEE; LEGISLATIVE BUDGET OFFICE

§ 27-103-113. Budget preparation.

JUDICIAL DECISIONS

1. Separation of powers.

Statute, which allowed the Executive Branch to make appropriations decisions, was constitutional as it did not violate the doctrine of separation of powers, because budget reductions imposed on state agencies by the Governor of the State of Mississippi pursuant to the statute were an exercise of the Executive's constitutional power to control the budget. Clark v. Bryant, 253 So. 3d 297, 2018 Miss. LEXIS 385 (Miss. 2018).

§ 27-103-139. Submission of budget; employment of budget officer.

JUDICIAL DECISIONS

1. Separation of powers.

Statute, which allowed the Executive Branch to make appropriations decisions, was constitutional as it did not violate the doctrine of separation of powers, because budget reductions imposed on state agencies by the Governor of the State of Mississippi, pursuant to the statute, were an exercise of the Executive's constitutional power to control the budget. Clark v. Bryant, 253 So. 3d 297, 2018 Miss. LEXIS 385 (Miss. 2018).

MISSISSIPPI PERFORMANCE BUDGET AND STRATEGIC PLANNING ACT OF 1994

Sec.

27-103-159. Certain state departments required to provide inventory of programs and activities; components of inventory; all state agencies required to provide report of all sources of revenue; components of report.

§ 27-103-153. Appropriation bills to include performance targets; performance measurement data to be maintained and reported.

Editor's Note — Subsection (2) refers to a provision in § 27-103-159 that provides for

an exemption for the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation from the requirements of this section. That provision was deleted by Laws of 2019, ch. 444, § 1, effective July 1, 2019.

§ 27-103-155. Evaluation of performance accomplishments; funding; reports; agency five-year strategic plans; Legislature review.

Editor's Note — Subsection (2) refers to a provision in § 27-103-159 that provides for an exemption for the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation from the requirements of this section, except for the strategic planning requirements. That provision was deleted by Laws of 2019, ch. 444, § 1, effective July 1, 2019.

§ 27-103-159. Certain state departments required to provide inventory of programs and activities; components of inventory; all state agencies required to provide report of all sources of revenue; components of report.

(1) For purposes of this section, the following terms shall have the following meanings as defined in this subsection:

(a) "Evidence-based program" means an intervention program that has had multiple site randomized controlled trials across heterogeneous populations demonstrating that the program is effective for the population and that does not have an equivalent or more probative body of rigorous evaluation demonstrating its ineffectiveness.

(b) "Intervention program" means a discrete and systematic set of activities designed to achieve one or more specific outcomes not constituted or reliably achieved by the activities themselves.

(c) "Research-based program" means an intervention program that has had at least one (1) rigorous controlled evaluation demonstrating effectiveness and does not have an equivalent or more probative body of evaluations demonstrating its ineffectiveness.

(d) "Promising program" means an intervention program that has had at least one (1) rigorous controlled evaluation demonstrating effectiveness.

(e) "Other programs" means all programs that do not fit the definition of evidence-based, research-based or promising programs. This category may include nonintervention programs as well as intervention programs with rigorous evidence of ineffectiveness, mixed evidence of effectiveness, or an absence of evidence.

(f) "Program inventory" means the list of all agency programs that for purposes of accountability means a set of activities upon which state resources are expended.

(g) "Rigorous controlled evaluation" means an evaluation for which the program received a ranking of at least three (3) on the Maryland Scientific Methods Scale, which level requires a control group.

(2) Beginning with the fiscal year 2016 budget cycle, the Legislative Budget Office shall require the Department of Corrections, the Department of Health, the Department of Education, and the Department of Transportation to comply with the requirements of this section respecting the inventorying of agency programs and activities for use in the budgeting process. The aforementioned agencies shall submit all program information to the Legislative Budget Office in accordance with any policies established by that office setting out requirements for any filings required under this section. Additional agencies shall be required to comply with the provisions of this subsection as provided in subsection (5) of this section.

(3) The Legislative Budget Office, the PEER Committee staff, and personnel of each of the agencies required to comply with this section shall review the programs of each agency and shall:

(a) Establish an initial inventory of agency programs as defined in subsection (1)(a) through (e) of this section;

(b) Categorize all agency programs as intervention or nonintervention and all intervention programs as evidence-based, research-based, promising, or other. Where possible, other intervention programs should be further classified according to the subcategories in subsection (1) of this section;

(c) Identify agency and program premises, goals, objectives, outcomes and outputs, as well as any other indicator or component the staffs consider to be appropriate, such as evidence of a program's adherence to best practices;

(d) Report estimated expenditures and full-time equivalent (FTE) positions for each agency program for each fiscal year;

(e) Recommend new and additional budget programs that capture the work of the agency identified through the inventory process and that are reasonable in number for making appropriations;

(f) Establish a procedure for base-lining programs which are built around promising practices or other programs that do not meet the definition of evidence-based or research-based programs, so that further research can be conducted to gauge the program's effectiveness;

(g) Describe the goals and theories used to develop any program that is neither evidence-based or research-based;

(h) Develop procedures for optimizing cost-effectiveness of agency programs; and

(i) Annually update each agency's inventory and related data as specified in paragraphs (b) through (e) of this subsection (3).

(4) Beginning with the fiscal year 2017 budget presentation, and each year thereafter, each state agency, general fund agency and special fund agency shall provide to the Joint Legislative Budget Committee a report of all sources of revenue, including the amounts from each source, collected by the agency in the most recent fiscal year. Such report shall include a list of each tax, fine or fee assessed by the agency, and it shall include the following for each:

(a) The amount assessed;

(b) The amount collected;

(c) The code section, regulation, or other authoritative source that authorized their assessment and collection;

(d) The method of determining assessments, including who is assessed, how the agency determines the amount of assessment, including rates;

(e) The methods of collecting the amounts assessed;

(f) The purposes for which the funds were expended by the agency;

(g) The amount of funds transferred to the general fund, if applicable, and the authority by which the transfer took place;

(h) The amount of funds transferred to another entity, if applicable, and the authority by which the transfer took place, as well as the name of the entity to which the funds were transferred;

(i) The fiscal year-end balance of every fund that receives revenue generated by fines and fees; and

(j) Any Maintenance of Effort agreements entered into with any federal agency or subdivision thereof.

For sums received from state sources, the agency shall list each source, including each special fund, along with the amounts received from each fund. For sums received from federal government sources, the agency shall list each source at its most specific level, such as an office or division, not simply the federal department from which it came. The report shall also include a detailed description of the actions or results that were promised by the agency in order to receive these funds.

These reports shall be posted on the Legislative Budget Committee's website.

(5) Upon recommendations of the PEER Committee staff, the Legislative Budget Office may for the fiscal year 2021 budget cycle and all later budget cycles, annually designate additional agencies that shall be required to comply with the provisions of subsections (1), (2) and (3) of this section. Material collected in association with the provisions of subsections (1), (2) and (3) of this section may be incorporated into agency appropriations bills to the extent deemed practicable by the Legislative Budget Committee.

HISTORY: Laws, 2014, ch. 444, § 1; Laws, 2015, ch. 480, § 1; Laws, 2016, ch. 358, § 1, eff from and after July 1, 2016; Laws, 2019, ch. 444, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote (1) to modify the definitions of "Evidence-based program," "Research-based program," "Promising practices" (now "program"), "Other programs," and "Program inventory," add the definitions of "Intervention program" and "Rigorous controlled evaluation" and delete the definition of "Program catalogue," which read: "'Program catalogue' means a compendium of programs compiled by a reputable source that publishes information for use by the government"; added the last sentence of (2); in (3), substituted "required to comply with" for "set out in" in the introductory paragraph, rewrote (a) and (b) to conform to the changes made in (1), added "such as evidence of a program's adherence to best practices" in (c), added (d) and (e), redesignated the remaining paragraphs accordingly, substituted "the goals and theories" for "any methodologies" and made minor stylistic changes in (g), rewrote (h), which read: "Establish a procedure for determining

cost-benefit ratios for all programs of each agency," and added (i); deleted former (4) and (5), which related to reporting requirements and exemption of certain state departments from reporting requirements; redesignated (6) as (4); added (5); and deleted former (7), which read: "The Legislative Budget Committee shall, no later than the 2019 Regular Session of the Legislature, make a recommendation to the Legislature regarding the application of the processes and requirements of this section to all agencies of state government."

BUDGET CONTINGENCY AND CAPITAL EXPENSE FUNDS

Sec.
27-103-302. Deepwater Horizon settlement funds to be deposited into State BP Settlement Fund and Gulf Coast Restoration Fund.
27-103-302.1. State BP Settlement Fund created.
27-103-303. Capital Expense Fund created; purposes.

§ 27-103-301. Budget Contingency Fund created.

Editor's Notes — Laws, 2018, 1st Ex Sess, ch. 3, § 12, effective September 5, 2018, provides:

"SECTION 12. (1) The State Treasurer shall transfer funds from the Budget Contingency Fund to the following special funds in the following amounts:

"(a) Fifty-two Million Eight Hundred Ninety-three Thousand Dollars ($52,893,000.00) to the 2018 Transportation and Infrastructure Improvements Fund created in House Bill No. 1, First Extraordinary Session of 2018;

"(b) One Million Dollars ($1,000,000.00) to the Mississippi Highway-Railroad Grade Crossing Safety Account created in Section 57-43-15; and

"(c) Seven Million Five Hundred Thousand Dollars ($7,500,000.00) to the Mississippi Railroad Improvements Fund created in Section 57-46-1.

"(2) The State Treasurer shall transfer seventy-five percent (75%) of the amount remaining in the Budget Contingency Fund after the transfers required in subsection (1) of this section into the Gulf Coast Restoration Fund created in Section 3 of this act."

Laws of 2020, ch. 303, § 1, effective May 20, 2020, as amended by Laws of 2020, ch. 494, § 1, effective August 18, 2020, provides:

"SECTION 1. Senate Bill No. 2772, 2020 Regular Session, is amended as follows:

"Section 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Capital Expense Fund out of the Budget Contingency Fund (Fund Number 6117700000)..... $ 7,599,822.00.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Budget Contingency Fund out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000)..... $ 900,000,000.00.

"(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Mississippi COVID-19 Relief Payment Fund created by this act out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000)..... $ 60,000,000.00.

"The Mississippi Department of Finance and Administration shall have the authority to receive, budget and escalate these federal funds for providing grants under Section 4 of this act.

"(4) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Back to Business Mississippi Grant Fund created by this act out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000)..... $ 240,000,000.00.

"The Mississippi Development Authority shall have the authority to receive, budget and escalate these federal funds for providing grants under Sections 5 through 10 of

this act."

Laws of 2020, ch. 303, § 12, effective May 20, 2020, as amended by Laws of 2020, ch. 494, § 1, effective August 18, 2020, provides:

"SECTION 12. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Laws of 2020, ch. 483, § 1, effective May 20, 2020, provides:

"SECTION 1. Upon the effective date of this act, the State Fiscal Officer shall transfer the sum of One Hundred Eighty-one Million Seven Hundred Seventy-five Thousand Dollars ($181,775,000.00) from the Budget Contingency Fund to the Unemployment Compensation Fund."

Laws of 2020, ch. 488, § 2, effective July 9, 2020, provides:

"SECTION 2. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer Three Hundred Thousand Dollars ($300,000.00) to the Equity in Distance Learning Fund, created in Section 8 of this act, out of the Budget Contingency Fund. The department shall spend the funds under this subsection (1) to assist with technology upgrades to the Mississippi Student Information System (MSIS) to support schools with the implementation of their individual digital learning plans to mitigate the impact of COVID-19.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer One Hundred Twenty-nine Million Seven Hundred Thousand Dollars ($129,700,000.00) to the Equity in Distance Learning Fund, created in Section 8 of this act, out of the Budget Contingency Fund. The department shall allocate the funds under this subsection (2) to the schools pursuant to Section 5(2) of this act.

"(3) Upon the effective date of this act, the State Fiscal Officer shall transfer Twenty Million Dollars ($20,000,000.00) to the Equity in Distance Learning Fund, created in Section 8 of this act, out of the Budget Contingency Fund. The department shall allocate the funds under this subsection (3) to the schools according to the schools' needs assessment responses."

Laws of 2020, ch. 489, §§ 6 and 12, effective July 8, 2020, provide:

"SECTION 6. Upon the effective date of this act, the State Fiscal Officer shall transfer funds from the Budget Contingency Fund to the "Postsecondary Education COVID-19 Mitigation Relief Grant Fund," the amount of One Hundred Million Dollars ($100,000,000.00) for the implementation and administration of the Postsecondary Education COVID-19 Mitigation Relief Program Act.

"SECTION 12. Upon the effective date of this act, the State Fiscal Officer shall transfer funds from the Budget Contingency Fund to the "Independent Schools' COVID-19 Assistance Grant Fund," the amount of Ten Million Dollars ($10,000,000.00) for the implementation and administration of the Independent Schools' COVID-19 Assistance Grant Program Act."

Laws of 2020, ch. 490, § 2, effective July 9, 2020, provides:

"SECTION 2. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer the sum of Fourteen Million Dollars ($14,000,000.00) from the Budget Contingency Fund to the Mississippi Tourism Recovery Fund created by Section 3 of this act.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer the sum of One Million Dollars ($1,000,000.00) from the Budget Contingency Fund to the Mississippi Nonprofit Museums Recovery Fund created by Section 4 of this act."

Laws of 2020, ch. 494, § 2, effective August 18, 2020, provides:

"SECTION 2. All changes made in this act to Senate Bill No. 2772, 2020 Regular Session [Chapter 303, Laws of 2020], shall be retroactive to May 20, 2020."

§ 27-103-302. Deepwater Horizon settlement funds to be deposited into State BP Settlement Fund and Gulf Coast Restoration Fund.

Through August 31, 2018, all funds received by or on behalf of the State of Mississippi through a negotiated settlement for economic damages in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, except for any funds that are required by the settlement to be paid to any other public entity, shall be deposited into the Budget Contingency Fund for appropriation by the Legislature.

From and after September 1, 2018, all funds received by or on behalf of the State of Mississippi through a negotiated settlement for economic damages in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, except for any funds that are required by the settlement to be paid to any other public entity, shall be deposited as follows: (a) twenty-five percent (25%) of each annual payment of those funds to the State of Mississippi shall be deposited into the State BP Settlement Fund created in Section 27-103-302.1, and (b) seventy-five percent (75%) of each annual payment of those funds to the State of Mississippi shall be deposited into the Gulf Coast Restoration Fund created in Section 57-119-1.

HISTORY: Laws, 2012, ch. 558, § 1, eff from and after passage (approved May 23, 2012); Laws, 2018, 1st Ex Sess, ch. 3, § 1, eff from and after passage (approved September 5, 2018).

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 5, 2018, added "Through August 31, 2018" at the beginning of the first paragraph; and added the second paragraph.

Cross References — State BP Settlement Fund, see § 27-103-302.1.

Gulf Coast Restoration Fund, see § 57-1-801 et seq.

§ 27-103-302.1. State BP Settlement Fund created.

There is created in the State Treasury a special fund to be designated as the "State BP Settlement Fund." The special fund shall consist of funds required to be deposited into the special fund by Section 27-103-302, funds appropriated or otherwise made available by the Legislature in any manner, and funds from any other source designated for deposit into the special fund. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund but shall remain in the State BP Settlement Fund. Any investment earnings or interest earned on amounts in the special fund shall be deposited to the credit of the special fund.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 3, § 2, eff from and after passage (approved September 5, 2018).

§ 27-103-303. Capital Expense Fund created; purposes.

(1) There is created in the State Treasury a special fund, separate and apart from any other fund, to be designated the Capital Expense Fund.

(2) The Capital Expense Fund shall not be considered as a surplus or available funds when adopting a balanced budget as required by law. The State Treasurer shall invest all sums in the Capital Expense Fund not needed for the purposes provided for in this section in certificates of deposit, repurchase agreements and other securities as authorized in Section 27-105-33(d) or Section 7-9-103, as the State Treasurer may determine to yield the highest market rate available. Interest earned on this fund shall be deposited by the State Treasurer into the State General Fund.

(3) The Capital Expense Fund shall be used for capital expense needs, repair and renovation of state-owned properties and specific expenditures authorized by the Legislature. The Legislature shall designate those capital expense projects, repair and renovation projects and other authorized projects in an appropriation act passed by the Legislature, which shall direct the Director of the Department of Finance and Administration to administer the projects.

(4) In addition to the purposes specified in subsection (3) of this section, the Capital Expense Fund shall be used to provide funds for emergency repairs on state-owned buildings and, until July 1, 2021, for the emergency plugging of orphaned wells identified by the Oil and Gas Board, upon requisition of the Director of the Department of Finance and Administration. Whenever the director determines that funds are immediately needed for emergency repairs on state-owned buildings or the Oil and Gas Board, through the State Oil and Gas Supervisor, has requested funds for the emergency plugging of orphaned wells identified by the board, he shall requisition the funds needed from the Capital Expense Fund, which shall be subject to the limitations set forth in this subsection. At the same time he makes the requisition, the director shall notify the Lieutenant Governor, the Speaker of the House of Representatives, the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee and the House Ways and Means Committee and the Legislative Budget Office of his determination of the need for the funds, the amount that he has requisitioned and where the funds will be used. If the amount requisitioned is available in the Capital Expense Fund, is not allocated for any specific projects as authorized in subsection (3) of this section and is within the limitations set forth below in this subsection, then the director may escalate the budget of the Bureau of Building, Grounds and Real Property Management or the Oil and Gas Board to use the full amount of the requisitioned funds for the emergency repairs or plugging of orphaned wells, and transfer that amount to the bureau or board for that purpose. If the amount requisitioned is more than the amount available in the Capital Expense Fund or above the limitations set forth below in this subsection, then the director may escalate the budget of the bureau or board to use the amount that is available within the limitations for the emergency repairs or plugging of orphaned wells, and transfer that amount to the bureau or board for that purpose. The maximum amount that may be transferred from the Capital Expense Fund to the bureau or board for any single emergency shall be One Million Dollars ($1,000,000.00), and the

maximum amount that may be transferred to the bureau or board for all emergencies during any fiscal year shall be Five Million Dollars ($5,000,000.00).

(5) Funds deposited in the Capital Expense Fund shall be used only for the purposes specified in this section, and as long as the provisions of this section remain in effect, no other expenditure, appropriation or transfer of funds in the Capital Expense Fund shall be made except by act of the Legislature making specific reference to the Capital Expense Fund as the source of those funds.

(6) Unexpended funds in the Capital Expense Fund at the end of a fiscal year shall not lapse into the State General Fund but shall remain in the fund for use under this section. Any funds appropriated from the Capital Expense Fund that are unexpended at the end of a fiscal year shall lapse into the Capital Expense Fund.

HISTORY: Laws, 2008, ch. 455, § 2; Laws, 2015, ch. 471, § 11; Laws, 2017, 1st Ex Sess, ch. 7, § 26, eff from and after passage (approved June 23, 2017.); Laws, 2019, ch. 474, § 7, eff from and after passage (approved April 16, 2019).

Editor's Notes — Laws of 2019, ch. 481, § 1, effective April 18, 2019, provides:

"SECTION 1. During fiscal year 2019, the State Fiscal Officer shall transfer from the General Fund (Fund No. 2999000000) Seventeen Million Six Hundred Fifty-eight Thousand Three Hundred Thirty-six Dollars ($17,658,336.00) to the Capital Expense Fund (Fund No. 6499C00000)."

Laws of 2019, ch. 481, § 2, effective April 18, 2019, provides:

"SECTION 2. During Fiscal Year 2020, the State Fiscal Officer 20 shall transfer from the Capital Expense Fund (Fund No. 6499C00000) 21 Seventeen Million Dollars ($17,000,000.00) to the 2018 Transportation and Infrastructure Improvements Fund (Fund No. 23 3316000000)."

Laws of 2020, ch. 303, § 1, effective May 20, 2020, as amended by Laws of 2020, ch. 494, § 1, effective August 18, 2020, provides:

"SECTION 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Capital Expense Fund out of the Budget Contingency Fund (Fund Number 6117700000) ..... $ 7,599,822.00.

"(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Budget Contingency Fund out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000) ..... $ 900,000,000.00.

"(3) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Mississippi COVID-19 Relief Payment Fund created by this act out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000) ..... $ 60,000,000.00.

"The Mississippi Department of Finance and Administration shall have the authority to receive, budget and escalate these federal funds for providing grants under Section 4 of this act.

"(4) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Back to Business Mississippi Grant Fund created by this act out of the DFA CARES ACT COVID-19 Fund (Fund Number 6820113000) ..... $ 240,000,000.00.

"The Mississippi Development Authority shall have the authority to receive, budget and escalate these federal funds for providing grants under Sections 5 through 10 of this act."

Laws of 2020, ch. 303, § 12, effective May 20, 2020, as amended by Laws of 2020, ch. 494, § 1, effective August 18, 2020, provides:

"SECTION 12. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be

invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Laws of 2020, ch. 478, § 3, effective July 8, 2020, provides:

"SECTION 3. During fiscal year 2020, the State Fiscal Officer shall transfer the sum of Fifty-five Million Dollars ($55,000,000.00) from the Working Cash-Stabilzation Reserve Fund (Fund Number 3399200000) to the Capital Expense Fund (Fund Number 6499C00000)."

Laws of 2020, ch. 494, § 2, effective August 18, 2020, provides:

"SECTION 2. All changes made in this act to Senate Bill No. 2772, 2020 Regular Session [Chapter 494, Laws of 2020], shall be retroactive to May 20, 2020."

Amendment Notes — The 2019 amendment, effective April 16, 2019, in (4), inserted "until July 1, 2021, for" in the first sentence, and "through the State Oil and Gas Supervisor" in the second sentence.

CHAPTER 104.

STATE FISCAL AFFAIRS

In General. 27-104-1
Mississippi Budget Transparency and Simplification Act of 2016. 27-104-201
2018 Transportation and Infrastructure Improvements Fund. 27-104-301

IN GENERAL

Sec.

27-104-7. Creation of public procurement review board; quorum; meetings; support personnel; powers and duties [Subsection (9) repealed effective July 1, 2022].
27-104-13. Revision of budget estimates for and reduction of funding allocations to general-fund and special-fund agencies and for "administration and other expenses" budget of Mississippi Department of Transportation; general fund revenue estimate to be adopted by Legislative Budget Office by sine die adjournment; transfers to General Fund.
27-104-25. Responsibility for obligations or indebtedness incurred in name of agency; limitations on obligations or indebtedness; payment of claims from prior fiscal year.

§ 27-104-7. Creation of public procurement review board; quorum; meetings; support personnel; powers and duties [Subsection (9) repealed effective July 1, 2022].

(1)(a) There is created the Public Procurement Review Board, which shall be reconstituted on January 1, 2018, and shall be composed of the following members:

(i) Three (3) individuals appointed by the Governor with the advice and consent of the Senate;

(ii) Two (2) individuals appointed by the Lieutenant Governor with the advice and consent of the Senate; and

(iii) The Executive Director of the Department of Finance and Administration, serving as an ex officio and nonvoting member.

(b) The initial terms of each appointee shall be as follows:

(i) One (1) member appointed by the Governor to serve for a term ending on June 30, 2019;

(ii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2020;

(iii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2021;

(iv) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2019; and

(v) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2020.

After the expiration of the initial terms, all appointed members' terms shall be for a period of four (4) years from the expiration date of the previous term, and until such time as the member's successor is duly appointed and qualified.

(c) When appointing members to the Public Procurement Review Board, the Governor and Lieutenant Governor shall take into consideration persons who possess at least five (5) years of management experience in general business, health care or finance for an organization, corporation or other public or private entity. Any person, or any employee or owner of a company, who receives any grants, procurements or contracts that are subject to approval under this section shall not be appointed to the Public Procurement Review Board. Any person, or any employee or owner of a company, who is a principal of the source providing a personal or professional service shall not be appointed to the Public Procurement Review Board if the principal owns or controls a greater than five percent (5%) interest or has an ownership value of One Million Dollars ($1,000,000.00) in the source's business, whichever is smaller. No member shall be an officer or employee of the State of Mississippi while serving as a voting member on the Public Procurement Review Board.

(d) Members of the Public Procurement Review Board shall be entitled to per diem as authorized by Section 25-3-69 and travel reimbursement as authorized by Section 25-3-41.

(e) The members of the Public Procurement Review Board shall elect a chair from among the membership, and he or she shall preside over the meetings of the board. The board shall annually elect a vice chair, who shall serve in the absence of the chair. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three (3) members shall be a quorum. No action shall be valid unless approved by a majority of the members present and voting, entered upon the minutes of the board and signed by the chair. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the chairs of the Appropriations Committees of the Senate and House of Representatives.

(2) The Public Procurement Review Board shall have the following powers and responsibilities:

(a) Approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities and equipment, except computer equipment acquired pursuant to Sections 25-53-1 through 25-53-29;

(b) Adopt regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities as well as related contracts for architectural and engineering services.

The provisions of this paragraph (b) shall not apply to such contracts involving buildings and other facilities of state institutions of higher learning which are self-administered as provided under this paragraph (b) or Section 37-101-15(m);

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space; the terms of the lease; the approximate square feet to be leased; the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management of the Department of Finance and Administration or the Public Procurement Review Board. The information shall be provided sufficiently in advance of the time the space is needed to allow the Division of Real Property Management of the Department of Finance and Administration to review and preapprove the lease before the time for advertisement begins;

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

(i) Black: having origins in any of the black racial groups of Africa;

(ii) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race;

(iii) Asian-American: having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(iv) American Indian or Alaskan Native: having origins in any of the original people of North America; or

(v) Female;

(e) In consultation with and approval by the Chairs of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building;

(f) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into by any agency that employs only nonstate service employees as defined in Section 25-9-107(c), any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the individual state institutions of higher learning, any personal service contracts entered into by the Mississippi Department of Transportation, any personal service contracts entered into by the Department of Human Services through June 30, 2019, which the Executive Director of the Department of Human Services determines would be useful in establishing and operating the Department of Child Protection Services, any personal service contracts entered into by the Department of Child Protection Services through June 30, 2019, any contracts for entertainers and/or performers at the Mississippi State Fairgrounds entered into by the Mississippi Fair Commission, any contracts entered into by the Department of Finance and Administration when procuring aircraft maintenance, parts, equipment and/or services, and any contract for attorney, accountant, actuary auditor, architect, engineer, and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d). Any rules and regulation changes related to personal and professional services contracts that the Public Procurement Review Board may propose shall be submitted to the Chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the Chairs of the Appropriation Committees of the Senate and House of Representatives at least fifteen (15)

days before the board votes on the proposed changes, and those rules and regulation changes, if adopted, shall be promulgated in accordance with the Mississippi Administrative Procedures Act;

(g) Approve all personal and professional services contracts involving the expenditures of funds in excess of Seventy-five Thousand Dollars ($75,000.00), except as provided in paragraph (f) of this subsection (2) and in subsection (8);

(h) Develop mandatory standards with respect to contractual services personnel that require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Public Procurement Review Board shall, unless exempted under this paragraph (h) or under paragraph (i) or (o) of this subsection (2), require the agency involved to submit the procurement to a competitive procurement process, and may reserve the right to reject any or all resulting procurements;

(i) Prescribe certain circumstances by which agency heads may enter into contracts for personal and professional services without receiving prior approval from the Public Procurement Review Board. The Public Procurement Review Board may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board;

(i) Agency requirements may be fulfilled by procuring services performed incident to the state's own programs. The agency head shall determine in writing whether the price represents a fair market value for the services. When the procurements are made from other governmental entities, the private sector need not be solicited; however, these contracts shall still be submitted for approval to the Public Procurement Review Board.

(ii) Contracts between two (2) state agencies, both under Public Procurement Review Board purview, shall not require Public Procurement Review Board approval. However, the contracts shall still be entered into the enterprise resource planning system.

(j) Provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the administrative monitoring of contract performance by the agency and successful steps in terminating a contract;

(k) Present recommendations for governmental privatization and to evaluate privatization proposals submitted by any state agency;

(*l*) Authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract, except the State Board of Education, which shall have the authority to enter into contractual agreements for student assessment for a period up to ten (10) years. The State Board of Education shall procure these services in accordance with the Public Procurement Review Board procurement regulations;

(m) Request the State Auditor to conduct a performance audit on any personal or professional service contract;

(n) Prepare an annual report to the Legislature concerning the issuance of personal and professional services contracts during the previous year, collecting any necessary information from state agencies in making such report;

(o) Develop and implement the following standards and procedures for the approval of any sole source contract for personal and professional services regardless of the value of the procurement:

(i) For the purposes of this paragraph (o), the term "sole source" means only one (1) source is available that can provide the required personal or professional service.

(ii) An agency that has been issued a binding, valid court order mandating that a particular source or provider must be used for the required service must include a copy of the applicable court order in all future sole source contract reviews for the particular personal or professional service referenced in the court order.

(iii) Any agency alleging to have a sole source for any personal or professional service, other than those exempted under paragraph (f) of this subsection (2) and subsection (8), shall publish on the procurement portal website established by Sections 25-53-151 and 27-104-165, for at least fourteen (14) days, the terms of the proposed contract for those services. In addition, the publication shall include, but is not limited to, the following information:

1. The personal or professional service offered in the contract;

2. An explanation of why the personal or professional service is the only one that can meet the needs of the agency;

3. An explanation of why the source is the only person or entity that can provide the required personal or professional service;

4. An explanation of why the amount to be expended for the personal or professional service is reasonable; and

5. The efforts that the agency went through to obtain the best possible price for the personal or professional service.

(iv) If any person or entity objects and proposes that the personal or professional service published under subparagraph (iii) of this paragraph (o) is not a sole source service and can be provided by another person or entity, then the objecting person or entity shall notify the Public Procurement Review Board and the agency that published the proposed sole source contract with a detailed explanation of why the personal or professional service is not a sole source service.

(v)1. If the agency determines after review that the personal or professional service in the proposed sole source contract can be provided by another person or entity, then the agency must withdraw the sole source contract publication from the procurement portal website and submit the procurement of the personal or professional service to an advertised competitive bid or selection process.

2. If the agency determines after review that there is only one (1) source for the required personal or professional service, then the agency

may appeal to the Public Procurement Review Board. The agency has the burden of proving that the personal or professional service is only provided by one (1) source.

3. If the Public Procurement Review Board has any reasonable doubt as to whether the personal or professional service can only be provided by one (1) source, then the agency must submit the procurement of the personal or professional service to an advertised competitive bid or selection process. No action taken by the Public Procurement Review Board in this appeal process shall be valid unless approved by a majority of the members of the Public Procurement Review Board present and voting.

(vi) The Public Procurement Review Board shall prepare and submit a quarterly report to the House of Representatives and Senate Accountability, Efficiency and Transparency Committees that details the sole source contracts presented to the Public Procurement Review Board and the reasons that the Public Procurement Review Board approved or rejected each contract. These quarterly reports shall also include the documentation and memoranda required in subsection (4) of this section. An agency that submitted a sole source contract shall be prepared to explain the sole source contract to each committee by December 15 of each year upon request by the committee.

(p) Assess any fines and administrative penalties provided for in Sections 31-7-401 through 31-7-423.

(3) All submissions shall be made sufficiently in advance of each monthly meeting of the Public Procurement Review Board as prescribed by the Public Procurement Review Board. If the Public Procurement Review Board rejects any contract submitted for review or approval, the Public Procurement Review Board shall clearly set out the reasons for its action, including, but not limited to, the policy that the agency has violated in its submitted contract and any corrective actions that the agency may take to amend the contract to comply with the rules and regulations of the Public Procurement Review Board.

(4) All sole source contracts for personal and professional services awarded by state agencies, other than those exempted under Section 27-104-7(2)(f) and (8), whether approved by an agency head or the Public Procurement Review Board, shall contain in the procurement file a written determination for the approval, using a request form furnished by the Public Procurement Review Board. The written determination shall document the basis for the determination, including any market analysis conducted in order to ensure that the service required was practicably available from only one (1) source. A memorandum shall accompany the request form and address the following four (4) points:

(a) Explanation of why this service is the only service that can meet the needs of the purchasing agency;

(b) Explanation of why this vendor is the only practicably available source from which to obtain this service;

(c) Explanation of why the price is considered reasonable; and

(d) Description of the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

(5) In conjunction with the State Personnel Board, the Public Procurement Review Board shall develop and promulgate rules and regulations to define the allowable legal relationship between contract employees and the contracting departments, agencies and institutions of state government under the jurisdiction of the State Personnel Board, in compliance with the applicable rules and regulations of the federal Internal Revenue Service (IRS) for federal employment tax purposes. Under these regulations, the usual common law rules are applicable to determine and require that such worker is an independent contractor and not an employee, requiring evidence of lawful behavioral control, lawful financial control and lawful relationship of the parties. Any state department, agency or institution shall only be authorized to contract for personnel services in compliance with those regulations.

(6) No member of the Public Procurement Review Board shall use his or her official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities, the contracting for personal or professional services, or the contracting for public construction under this chapter.

(7) Notwithstanding any other laws or rules to the contrary, the provisions of subsection (2) of this section shall not be applicable to the Mississippi State Port Authority at Gulfport.

(8) Nothing in this section shall impair or limit the authority of the Board of Trustees of the Public Employees' Retirement System to enter into any personal or professional services contracts directly related to their constitutional obligation to manage the trust funds, including, but not limited to, actuarial, custodial banks, cash management, investment consultant and investment management contracts.

(9) Notwithstanding the exemption of personal and professional services contracts entered into by the Department of Human Services and personal and professional services contracts entered into by the Department of Child Protection Services from the provisions of this section under subsection (2)(f), before the Department of Human Services or the Department of Child Protection Services may enter into a personal or professional service contract, the department(s) shall give notice of the proposed personal or professional service contract to the Public Procurement Review Board for any recommendations by the board. Upon receipt of the notice, the board shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the board does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may enter the proposed personal or professional service contract. If the board responds to the department(s) within seven (7) calendar days, then the board has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may enter the proposed personal or professional service contract. The board is not authorized to disapprove any proposed personal or

professional services contracts. This subsection shall stand repealed on July 1, 2022.

HISTORY: Laws, 1984, ch. 488, § 77; Laws, 1988 Ex Sess, ch. 14, § 69; Laws, 1989, ch. 532, § 55; Laws, 1989, ch. 544, § 13; Laws, 1990, ch. 522, § 3; Laws, 2005, ch. 504, § 2; Laws, 2006, ch. 457, § 1; Laws, 2010, ch. 314, § 1; Laws, 2012, ch. 485, § 1; Laws, 2012, ch. 512, § 1; Laws, 2014, ch. 533, § 1; Laws, 2016, ch. 337, § 1; Laws, 2016, ch. 399, § 1; Laws, 2017, ch. 400, § 13, eff from and after Jan. 1, 2018; Laws, 2019, ch. 329, § 2, eff from and after passage (approved March 15, 2019); Laws, 2019, ch. 382, § 4, eff from and after July 1, 2019; Laws, 2019, ch. 465, § 3, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references by substituting "this paragraph (b)" for "this paragraph" and "this paragraph (b) or Section 37-101-15(m)" for "Section 27-104-7(2)(b) or Section 37-101-15(m)" in (2)(b). The Joint Committee ratified the correction at its August 12, 2019, meeting.

Section 2 of Chapter 329, Laws of 2019, effective upon passage (approved March 15, 2019), Section 4 of Chapter 382, Laws of 2019, effective July 1, 2019 (approved March 22, 2019), and Section 3 of Chapter 465, Laws of 2019, effective July 1, 2019 (approved April 16, 2019) amended this section. The amendments to this section by Section 4 of Chapter 382 do not conform and do not meet the Joint Legislative Committee's criteria for integration and were superseded by Section 3 Chapter 465, which has the same effective date but later approval date. The amendments by Section 2 of Chapter 329 and Section 3 of Chapter 465 do not conform and do meet the Committee's criteria for integration. As set out above, the section reflects the language of both Section 4 of Chapter 382 and Section 3 of Chapter 465 pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments that meet the Committee's criteria for integration. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee.

Amendment Notes — The first 2019 amendment (ch. 329), effective March 15, 2019, inserted "any contracts entered into by the Department of Finance and Administration when procuring aircraft maintenance, parts, equipment and/or services" near the end of the first sentence of (f); inserted "(2)" following "paragraph (f) of this subsection" in (2)(o)(iii); and made a minor punctuation change.

The second 2019 amendment (ch. 382) substituted "July 1, 2020" for "July 1, 2019" twice in (2)(f); and extended the date of the repealer for (9) by substituting "July 1, 2020" for "July 1, 2019" in the last sentence.

The third 2019 amendment (ch. 465) added the second paragraph of (2)(b); inserted "(2)" in (2)(o)(iii); and extended the date of the repealer for (9) by substituting "July 1, 2022" for "July 1, 2019" in the last sentence.

§ 27-104-13. Revision of budget estimates for and reduction of funding allocations to general-fund and special-fund agencies and for "administration and other expenses" budget of Mississippi Department of Transportation; general fund revenue estimate to be adopted by Legislative Budget Office by sine die adjournment; transfers to General Fund.

(1) The State Fiscal Officer may disapprove or reduce and revise the

estimates of general funds and state-source special funds for any general fund or special fund agency and for the "administration and other expenses" budget of the Mississippi Department of Transportation and the Office of State Aid Road Construction, in an amount not to exceed five percent (5%), if at any time he finds that funds will not be available within the period for which the budget is drawn, or if at any time he finds that the requested expenditures, or any part thereof, are not authorized by law, and that action shall be reported to the Legislative Budget Office.

The State Fiscal Officer may, upon his determination of need based upon a finding that funds will not be available within the period for which the budget is drawn, transfer funds as provided in Section 27-103-203, from the Working Cash-Stabilization Reserve Fund to the General Fund to supplement the general fund revenue.

If the estimates of general funds and state-source special funds of all general fund and special fund agencies and of the "administration and other expenses" budget of the Mississippi Department of Transportation and the Office of State Aid Road Construction have been reduced by five percent (5%), additional reductions may be made, but shall consist of a uniform percentage reduction of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation and the Office of State Aid Road Construction.

Any state-source special funds reduced under the provisions of this subsection (1) shall be transferred to the State General Fund upon requisitions for warrants signed by the respective agency head, and the transfer shall be made within a reasonable period to be determined by the State Fiscal Officer.

The provisions of this subsection (1) authorizing the State Fiscal Officer to disapprove or reduce and revise the estimates of general funds and state-source special funds for the "administration and other expenses" budget of the Mississippi Department of Transportation and the Office of State Aid Road Construction shall be suspended during the period from June 30, 2009, through June 30, 2010.

(2) The Department of Revenue and University Research Center, utilizing all available revenue forecast data, shall annually develop a general fund revenue estimate to be adopted by the Joint Legislative Budget Committee as of the date of sine die adjournment. If, at the end of October, or at the end of any month thereafter of any fiscal year, the revenues received for the fiscal year fall below ninety-eight percent (98%) of the general fund revenue estimate adopted by the Joint Legislative Budget Committee at the date of sine die adjournment, the State Fiscal Officer shall reduce allocations of general funds and state-source special funds to general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation and the Office of State Aid Road Construction, in an amount necessary to keep expenditures within the sum of actual general fund receipts, including any transfers to the General Fund from the Working Cash-Stabilization Reserve Fund for the fiscal year.

The State Fiscal Officer may, upon his determination of need based on the revenue shortfall, transfer funds as provided in Section 27-103-203 from the Working Cash-Stabilization Reserve Fund to the General Fund to supplement the general fund revenue. State-source special funds in an amount equal to any reduction made under the provisions of this subsection (2) shall be transferred to the State General Fund upon requisitions for warrants signed by the respective agency head, and the transfer shall be made within a reasonable period to be determined by the State Fiscal Officer.

No agency's allocation shall be reduced in an amount to exceed five percent (5%); however, if the allocations of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation and the Office of State Aid Road Construction have been reduced by five percent (5%), any additional reductions required to be made under this subsection (2) shall consist of a uniform percentage reduction of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation and the Office of State Aid Road Construction. Any receipt from loans authorized by Sections 31-17-101 through 31-17-123 shall not be included as revenue receipts.

The State Fiscal Officer shall immediately send notice of any action taken under authority of this subsection (2) to the Legislative Budget Office.

The provisions of this subsection (2) requiring the State Fiscal Officer to reduce allocations of general funds and state-source special funds to general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation shall be suspended during the period from June 30, 2009, through June 30, 2010.

(3) For the purpose of this section, the term "state-source special funds" means any special funds in any agency derived from any source, but shall not include the following special funds: special funds derived from federal sources, from local or regional political subdivisions, from agricultural commodity assessments, or from donations; special funds derived from additional fees paid for the issuance of distinctive motor vehicle license tags or plates authorized under the provisions of Chapter 19, Title 27, Mississippi Code of 1972; special funds held in a fiduciary capacity for the benefit of specific persons or classes of persons; special funds of the Mississippi Veterans Affairs Board that are paid to the board by the veteran residents of state veterans homes to fund their monthly expenses at the state veterans homes; self-generated special funds of the state institutions of higher learning or the state community or junior colleges; special funds of Mississippi Industries for the Blind, the State Port at Gulfport, Yellow Creek Inland Port, Pat Harrison Waterway District, Pearl River Basin Development District, Pearl River Valley Water Management District, Tombigbee River Valley Water Management District, Yellow Creek Watershed Authority, or Coast Coliseum Commission; special funds of the Department of Wildlife, Fisheries and Parks and the Department of Marine Resources derived from the issuance of hunting or

fishing licenses; and special funds generated by agencies whose primary function includes the establishment of standards and the issuance of licenses for the practice of a profession within the State of Mississippi. The Mississippi School of the Arts established in Section 37-140-1 et seq., the Mississippi School for the Blind and Deaf established in Section 43-5-1 et seq., and the Mississippi School for Mathematics and Science established in Section 37-139-1 et seq., shall be subject to any mid-year budget revisions or reductions imposed by the State Fiscal Officer under this section only to the same extent as is applicable to other school districts in the state.

HISTORY: Laws, 1984, ch. 488, § 80; Laws, 1986, ch. 480, § 2; Laws, 1989, ch. 532, § 57; Laws, 1992, ch. 484 § 9; Laws, 2005, ch. 440, § 1; Laws, 2005, 5th Ex Sess, ch. 12, § 2; Laws, 2009, 2nd Ex Sess, ch. 126, § 6; Laws, 2011, ch. 329, § 1; Laws, 2011, ch. 504, § 1; Laws, 2017, 1st Ex Sess, ch. 6, § 5, eff from and after July 1, 2017; Laws, 2019, ch. 327, § 1, eff from and after passage (approved March 15, 2019); Laws, 2019, ch. 432, § 9, eff from and after July 1, 2019.

Joint Legislative Committee Note — Section 1 of Chapter 327, Laws of 2019, effective from and after passage (approved March 15, 2019), amended this section. Section 9 of Chapter 432, Laws of 2019, effective July 1, 2019 (approved March 29, 2019), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee.

Amendment Notes — The first 2019 amendment (ch. 327), effective March 15, 2019, inserted "and the Office of State Aid Road Construction" seven times.

The second 2019 amendment (ch. 432) added the last sentence of (3).

JUDICIAL DECISIONS

1. Constitutionality.

Statute which allowed the Executive Branch to make appropriations decisions was constitutional, as it did not violate the doctrine of separation of powers, because budget reductions imposed on state agencies by the Governor of the State of Mississippi pursuant to the statute were an exercise of the Executive's constitutional power to control the budget. Clark v. Bryant, 253 So. 3d 297, 2018 Miss. LEXIS 385 (Miss. 2018).

§ 27-104-25. Responsibility for obligations or indebtedness incurred in name of agency; limitations on obligations or indebtedness; payment of claims from prior fiscal year.

(1) The executive head and business manager of each state agency shall be responsible for all obligations or indebtedness incurred in the name of the agency, or by any employee for them when incurred by such employee acting within the scope of his employment.

(2) No obligations or indebtedness shall be incurred by any such person

during any allotment period in excess of the amount of the estimate approved by the Department of Finance and Administration or in the agency appropriation bill.

If a claim arising from orders for goods or services from the prior fiscal year is presented within one (1) year and (a) the payment of a claim does not cause an agency to exceed the amount of its prior year budget estimate as approved by the Department of Finance and Administration or its appropriation bill, and (b) sufficient funds remain in the current fiscal year's allotment to pay the claim, the State Treasurer, upon approval of the claim by the Department of Finance and Administration, shall draw a warrant in payment of the claim.

(3) Contractual obligations, such as salary contracts, from a prior fiscal year that do not meet the requirements for payment under subsection (2) of this section may only be paid upon approval by the Executive Director of the Department of Finance and Administration.

(4) Contractual obligations of agencies shall include appropriate cancellation clauses in the event the anticipated revenues from which they are to be paid do not become available.

(5) Agencies having special funds, as defined in Section 27-103-103, shall not incur obligations or indebtedness against such special funds in an amount in excess of revenues actually anticipated and budgeted.

(6) If obligations or indebtedness shall be incurred contrary to the provisions hereof, then neither the State of Mississippi nor the agency shall have any liability therefor, and the person, firm or corporation to whom the obligation or indebtedness is due may recover the amount of the obligation or indebtedness and twenty-five percent (25%) of the amount as liquidated damages from the responsible officers, either personally or upon their official bonds, either severally or jointly.

(7) Provided, however, that no personal liability of the responsible officers under this section shall include any unfunded liability for employee retirement or pension funds. Nothing in this section shall diminish any responsibility of the responsible officers to fund any employee retirement or pension plans, or any liability as a result of any failure to fund such plans as otherwise required by law.

HISTORY: Laws, 1984, ch. 488, § 86; Laws, 1991, ch. 603, § 2, eff from and after July 1, 1991; Laws, 2018, ch. 434, § 3, eff from and after July 1, 2018; Laws, 2019, ch. 483, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2018 amendment added (6).

The 2019 amendment rewrote former (3), which read: "Contractual obligations, such as salary contracts, shall be considered as incurred within the fiscal period in which they are to be paid, and are to be encumbered against funds to be available in that fiscal period, and shall include appropriate cancellation clauses in the event the anticipated revenues from which they are to be paid do not become available" and divided it into present (3) and (4); and redesignated former (4) through (6) as (5) through (7); and substituted "either severally or jointly" for "either severally of jointly" in (6).

DEPARTMENT OF FINANCE AND ADMINISTRATION

§ 27-104-103. Duties and powers of department; funding of agency expenses; deposit of monies into State General Fund.

Editor's Notes — Laws of 2018, ch. 352, § 1, provides

"(1) The Department of Finance and Administration, is authorized to enter into an agreement to lease no more than seven (7) acres of state-owned real property in the City of Jackson, Hinds County, Mississippi, to a nonprofit entity for the purpose of creating a pediatric skilled nursing, palliative care and respite facility for the severely disabled, and for the use of associated administrative office space for an initial term of no more than forty (40) years and one (1) additional ten-year renewal period at the discretion of the Department of Finance and Administration. The property to be leased is currently undeveloped property to the south of Eastover Drive, west of Ridgewood Road, north of Lakeland Drive and east of I-55, located in the City of Jackson, Hinds County, Mississippi. The parcel of the undeveloped property to be leased shall be that immediately to the south of the Mississippi Library Commission building and immediately to the west of the Mississippi Public Broadcasting building, and more particularly described in the agreement as determined by the Department of Finance and Administration.

"(2) At the end of the lease term and any renewals provided for in this act, the property leased under the authority of this section along with any improvements subsequently made thereupon shall revert to the State of Mississippi.

"(3) The lease of the real property described in subsection (1) of this section shall consist of a patient care facility which, at a minimum, will contain:

"(a) Approximately thirty thousand (30,000) square feet of patient care and related support space;

"(b) Approximately 30 patient care beds;

"(c) Surface parking; and

"(d) Landscaping and green space buffers.

"(4) The Department of Finance and Administration shall review and approve all plans prior to issuance of any notice to proceed for clearing, site development or construction to ensure that proposed development:

"(a) Is harmonious with current use of adjacent property by state agencies and institutions;

"(b) Is appropriately interfaced with state-owned streets and infrastructure, with any tie-in to state-owned utilities properly metered for billing;

"(c) Poses no conflict to future development of other adjacent state-owned property; and (d) Maintains adequate landscape buffer with adjacent private property.

"(5) The lease and any amendments to the lease shall be prepared by the Department of Finance and Administration and subject to approval by the Public Procurement Review Board.

"(6) All proceeds derived or received from all leases entered into under this section shall be deposited into the state land acquisition fund.

"(7) The State of Mississippi shall retain all mineral rights to the real property leased under this section.

"(8) The Governor may designate the Executive Director of the Department of Finance and Administration or his or her designee, to attend the meetings of the board of the nonprofit organization which will own and operate the facility. Said attendee shall have no jurisdiction or vote on any matter within the jurisdiction of the board."

Laws of 2020, ch. 303, § 12, effective May 20, 2020, as amended by Laws of 2020, ch. 494, § 1, effective August 18, 2020, provides:

"SECTION 12. If any section, paragraph, sentence, clause, phrase or any part of this

act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

§ 27-104-107. Lease, sublease, or lease-purchase of real property by Department of Finance and Administration.

Editor's Notes — Laws of 2018, ch. 352, § 1, provides

"(1) The Department of Finance and Administration, is authorized to enter into an agreement to lease no more than seven (7) acres of state-owned real property in the City of Jackson, Hinds County, Mississippi, to a nonprofit entity for the purpose of creating a pediatric skilled nursing, palliative care and respite facility for the severely disabled, and for the use of associated administrative office space for an initial term of no more than forty (40) years and one (1) additional ten-year renewal period at the discretion of the Department of Finance and Administration. The property to be leased is currently undeveloped property to the south of Eastover Drive, west of Ridgewood Road, north of Lakeland Drive and east of I-55, located in the City of Jackson, Hinds County, Mississippi. The parcel of the undeveloped property to be leased shall be that immediately to the south of the Mississippi Library Commission building and immediately to the west of the Mississippi Public Broadcasting building, and more particularly described in the agreement as determined by the Department of Finance and Administration.

"(2) At the end of the lease term and any renewals provided for in this act, the property leased under the authority of this section along with any improvements subsequently made thereupon shall revert to the State of Mississippi.

"(3) The lease of the real property described in subsection (1) of this section shall consist of a patient care facility which, at a minimum, will contain:

"(a) Approximately thirty thousand (30,000) square feet of patient care and related support space;

"(b) Approximately 30 patient care beds;

"(c) Surface parking; and

"(d) Landscaping and green space buffers.

"(4) The Department of Finance and Administration shall review and approve all plans prior to issuance of any notice to proceed for clearing, site development or construction to ensure that proposed development:

"(a) Is harmonious with current use of adjacent property by state agencies and institutions;

"(b) Is appropriately interfaced with state-owned streets and infrastructure, with any tie-in to state-owned utilities properly metered for billing;

"(c) Poses no conflict to future development of other adjacent state-owned property; and (d) Maintains adequate landscape buffer with adjacent private property.

"(5) The lease and any amendments to the lease shall be prepared by the Department of Finance and Administration and subject to approval by the Public Procurement Review Board.

"(6) All proceeds derived or received from all leases entered into under this section shall be deposited into the state land acquisition fund.

"(7) The State of Mississippi shall retain all mineral rights to the real property leased under this section.

"(8) The Governor may designate the Executive Director of the Department of Finance and Administration or his or her designee, to attend the meetings of the board of the nonprofit organization which will own and operate the facility. Said attendee shall have no jurisdiction or vote on any matter within the jurisdiction of the board."

MISSISSIPPI BUDGET TRANSPARENCY AND SIMPLIFICATION ACT OF 2016

Sec.

27-104-203. State agencies prohibited from charging another state agency fees, etc., for services or resources received; exemptions.
27-104-205. Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund; exemptions.

§ 27-104-203. State agencies prohibited from charging another state agency fees, etc., for services or resources received; exemptions.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent, audit fee, personnel fee or other charge for services or resources received. The provisions of this section shall not apply (a) to grants, contracts, pass-through funds, project fees or other charges for services between state agencies and the Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education, nor (b) to charges for services between the Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education, nor (c) to federal grants, pass-through funds, cost allocation charges, surplus property charges or project fees between state agencies as approved or determined by the State Fiscal Officer, nor (d) telecommunications, data center services, and/or other information technology services that are used on an as-needed basis and those costs shall be passed through to the using agency, nor (e) to federal grants, special funds, or pass-through funds, available for payment by state agencies to the Department of Finance and Administration related to Mississippi Management and Reporting Systems (MMRS) Statewide Application charges and utilities as approved or determined by the State Fiscal Officer. The Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education shall retain the authority to charge and be charged for expenditures that they deemed nonrecurring in nature by the State Fiscal Officer.

HISTORY: Laws, 2016, ch. 459, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 1, eff from and after passage (approved June 23, 2017); Laws, 2018, ch. 433, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment added (d) and (e) in the second sentence.

§ 27-104-205. Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund; exemptions.

(1) From and after July 1, 2016, the expenses of the following enumerated state agencies shall be defrayed by appropriation of the Legislature from the State General Fund: the State Fire Marshal, the State Fire Academy, the Office of Secretary of State (not including the Preneed Contracts Loss Recovery Fund), the Mississippi Public Service Commission, the Mississippi Department of Information Technology Services, (not including the Mississippi Department of Information Technology Services Revolving Fund), the State Personnel Board, the Mississippi Department of Insurance (not including the Municipal Fire Protection Fund, Section 83-1-37, the County Volunteer Fire Department Fund, Section 83-1-39, and the Mississippi Propane Education and Research Fund, Section 75-57-119), the Mississippi Law Enforcement Officers' Minimum Standards Board, the Mississippi Gaming Commission, the Mississippi Department of Revenue - License Tag, the Office of the State Public Defender, the Mississippi Workers' Compensation Commission (not including the Second Injury Trust Fund) and the Office of Attorney General. Beginning July 1, 2016, any fees, assessments or other revenues charged for the support of the above-named state agencies shall be deposited into the State General Fund, and any special fund or depository established within the State Treasury for the deposit of such fees, assessments or revenues shall be abolished and the balance transferred to the State General Fund. Expenses heretofore drawn from such special funds or other depositories shall be drawn from the agencies General Fund Account.

(2) Beginning with the fiscal year ending June 30, 2016, the amount to be appropriated annually from the State General Fund for the support of each of the above-named state agencies shall not exceed the amount appropriated for such purpose in the preceding fiscal year, plus any increases in or additional fees, assessments or other charges authorized by act of the Legislature for the succeeding fiscal year.

(3) The provisions of this section shall not apply to any trust fund account that is maintained by any above-named agency.

(4) The provisions of this section shall not prohibit any of the above-named agencies from maintaining clearing accounts in approved depositories.

(5) The provisions of this section shall not apply to any trust fund accounts maintained by the Public Employees' Retirement System and protected under Section 272A of the Mississippi Constitution of 1890.

HISTORY: Laws, 2016, ch. 459, § 3; Laws, 2017, 1st Ex Sess, ch. 7, § 2, eff from and after passage (approved June 23, 2017); Laws, 2018, ch. 433, § 2, eff from and after July 1, 2018; Laws, 2019, ch. 474, § 6, eff from and after passage (approved April 16, 2019).

Amendment Notes — The 2018 amendment, in the first sentence of (1), inserted "(not including the Mississippi Department of Information Technology Services Revolving Fund)," deleted "and the Mississippi Department of Finance and Administration

(not including the Statewide Cost Allocation Plan, the Office of Surplus Property and the Office of Insurance)" following "the Office of Attorney General" and made a related change, and made several minor punctuation changes.

The 2019 amendment, effective April 16, 2019, deleted "the Mississippi Oil and Gas Board" following "the Mississippi Gaming Commission" in (1).

2018 TRANSPORTATION AND INFRASTRUCTURE IMPROVEMENTS FUND

Sec.
27-104-301. 2018 Transportation and Infrastructure Improvements Fund created; disbursement of monies in fund.

§ 27-104-301. 2018 Transportation and Infrastructure Improvements Fund created; disbursement of monies in fund.

(1) A special fund, to be designated the "2018 Transportation and Infrastructure Improvements Fund," is created within the State Treasury, which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund.

(2) Monies deposited into the fund shall be disbursed, in the discretion of the Department of Finance and Administration, as follows:

(a) To pay the costs incurred by the Mississippi Transportation Commission and the Mississippi Department of Transportation to widen Mississippi Highway 16 to three (3) lanes as follows:

(i) From near the Neely Town Road at the DeKalb City Limits to the point at which Old Philadelphia Road ties into Mississippi Highway 16; and

(ii) Between the two (2) points at which Mississippi Highway 39 ties into Mississippi Highway 16 ..... $2,000,000.00.

(b) To assist in paying the costs associated with preconstruction, design, engineering, land acquisition, right-of-way acquisition, construction and development of the Reunion Parkway project from Bozeman Road to Parkway East in Madison County, Mississippi ..... $8,000,000.00.

(c) To assist the East Metropolitan Corridor Commission, which is a commission operating as a local public agency representing the Jackson Municipal Airport Authority, the City of Brandon, Mississippi, the City of Flowood, Mississippi, and the City of Pearl, Mississippi, in paying the costs associated with land acquisition and implementation of the East Metro Corridor project in Rankin County, Mississippi, from its current terminus at the southeast corner of, and within, the Jackson-Medgar Wiley Evers International Airport, traversing easterly and southerly and

terminating at Interstate 20 at Crossgates Boulevard in Brandon, Mississippi ..... $8,000,000.00.

(d) To assist DeSoto County, Mississippi, in paying the costs of rebuilding Holly Springs Road in DeSoto County and drainage improvements to the road ..... $3,000,000.00.

(e) To assist Carroll County, Mississippi, in paying the costs of repair, renovation or replacement of two (2) closed bridges on or near County Road 57 in Carroll County ..... $ 500,000.00.

(f) To assist Lamar County, Mississippi, in paying the costs associated with necessary infrastructure improvements in Beat 5 of Lamar County and/or construction of recreational facilities in Beat 5 ..... $ 500,000.00.

(g) To assist Lamar County, Mississippi, in paying the costs of improvements to the intersection of Scruggs Road and Mississippi Highway 589, including, but not limited to, the relocation of portions of the road, the purchase of property related to the relocation, signage, paving, other costs related to improving the safety of the intersection and other road safety projects in Supervisors District 5 of Lamar County ..... $1,500,000.00.

(h) To assist Bolivar County, Mississippi, in paying the costs associated with preplanning and construction of a Mississippi River landing dock facility and related facilities in Bolivar County .....$1,000,000.00.

(i) To assist Rankin County, Mississippi, in paying the costs related to the extension of Gunter Road in Rankin County .....$2,800,000.00.

(j) To assist the Pearl River Valley Water Supply District in paying the costs associated with the repair, rehabilitation, reconstruction or replacement of seawalls at the Ross Barnett Reservoir as required by the settlement agreement in the case of Bobby L. Baker, Jr., et al. v. Pearl River Valley Water Supply District, in the Circuit Court of Rankin County, Mississippi, Civil Action No. 212-133E ..... $4,000,000.00.

(k) To assist the City of Hattiesburg, Mississippi, in paying the costs associated with resurfacing and other improvements to Hardy Street in the City of Hattiesburg from its intersection with U.S. Highway 49 East to its intersection with West Pine Street in the City of Hattiesburg ..... $ 400,000.00.

(*l*) To assist the City of Hattiesburg, Mississippi, in paying the costs associated with resurfacing and other improvements to 38th Avenue in the City of Hattiesburg ..... $ 100,000.00.

(m) To assist Hinds County, Mississippi, in paying the costs of construction and development of the Byram-Clinton Parkway project in Hinds County ..... $2,000,000.00.

(n) To assist the City of Senatobia, Mississippi, in paying the costs associated with the following purposes, in the following order:

(i) Construction and development of roundabout projects and other improvements at the intersection of Main Street and Scott Street and adjoining or related intersections in the City of Senatobia;

(ii) Improvements at the intersection of Front Street and Main Street in the City of Senatobia; and

(iii) Improvements at the intersection of Heard Street and Main Street in the City of Senatobia ..... $2,300,000.00.

Any such funds that are in excess of that needed to complete the projects described in this paragraph shall be used to assist the City of Senatobia in paying the costs associated with making historically relevant infrastructure improvements in the city's downtown historic district. In addition, the scope of work for any projects described in this paragraph that are located in the city's downtown historic district must be in keeping with the character of the district.

(o) To assist in paying the costs associated with:

(i) Constructing, developing, extending and implementing wastewater infrastructure and related facilities, systems and infrastructure within and/or near Gateway Industrial Park in Pike County, Mississippi; and

(ii) Constructing access roads and related infrastructure within and/or near Gateway Industrial Park in Pike County .....$3,000,000.00.

(p) To assist the City of Petal, Mississippi, in paying the costs associated with (i) the repair, rehabilitation, resurfacing, construction and reconstruction of Leeville Road/Main Street located in Forrest County, Mississippi, in the City of Petal from its intersection with the Evelyn Gandy Parkway southerly to the boundary of the corporate limits of the City of Petal; and (ii) the repair, rehabilitation, resurfacing, construction and reconstruction of Smithville Road located in Forrest County, Mississippi, in the City of Petal .....$ 750,000.00.

(q) To assist the Town of West, Mississippi, in paying the costs associated with repairs, resurfacing and making other improvements to streets in the Town of West ..... $ 500,000.00.

(r) To assist Oktibbeha County, Mississippi, in paying the costs associated with the resurfacing and repaving of Longview Road in Oktibbeha County ..... $ 750,000.00.

(s) To assist in paying the costs associated with the completion of the four-lane of Mississippi Highway 19 South at the south Philadelphia City boundary intersection at Holland Avenue and extending south along Mississippi Highway 19 South to the intersection of BIA Road 241 (also known as Tucker Road), including, but not be limited to, all necessary acquisition, preconstruction and construction activities ..... $2,000,000.00.

(t) To assist the City of Pascagoula, Mississippi, in paying the costs associated with construction and development of the East Bank Access Road project in the City of Pascagoula ..... $2,000,000.00.

(u) To assist the Pascagoula Port Authority in paying the costs associated with construction and development of the North Rail Corridor project in Jackson County, Mississippi ..... $2,000,000.00.

(v) To assist the Town of Carrollton, Mississippi, in paying the costs associated with making improvements to Washington Street in the Town of Carrollton ..... $ 200,000.00.

(w) To assist the City of Winona, Mississippi, in paying the costs associated with making improvements to Powell Street in the City of Winona ..... $ 300,000.00.

(x) To assist the Town of Como, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Como ..... $ 250,000.00.

(y) To assist the Town of Sledge, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Sledge ..... $ 250,000.00.

(z) To assist the Town of Itta Bena, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Itta Bena .....$ 250,000.00.

(aa) To assist the City of Grenada, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Grenada ..... $ 500,000.00.

(bb) To assist the City of Waynesboro, Mississippi, in paying the costs associated with the Ramey Lane/Martin Luther King, Jr., Drive sewer repair and resurfacing project in the City of Waynesboro ..... $ 500,000.00.

(cc) To assist the City of Corinth, Mississippi, in paying the costs associated with repair, rehabilitation, maintenance and other improvements to roads in the City of Corinth ..... $ 500,000.00.

(dd) To assist the City of Long Beach, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Long Beach ..... $1,000,000.00.

(ee) To assist Wilkinson County, Mississippi, in paying the costs associated with the repair, rehabilitation, replacement, reconstruction and/or construction of bridges in Wilkinson County, including those bridges on state-designated highways that are maintained by the county ..... $1,700,000.00.

(ff) To assist the City of Vicksburg, Mississippi, in paying the costs associated with:

(i) Transportation infrastructure due diligence to increase multimodal river transportation options in the City of Vicksburg; and

(ii) Expanded multimodal layout to provide a combination of rail, interstate, airport, and river access in and to the City of Vicksburg ..... $1,000,000.00.

(gg) To assist the Town of Flora, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Flora ..... $ 300,000.00.

(hh) To assist in paying the costs associated with making improvements to:

(i) The intersection of Mississippi Highway 9W and Mississippi Highway 7 in Lafayette County, Mississippi;

(ii) A portion of Mississippi Highway 7 beginning at its intersection with Mississippi Highway 9W and running approximately one (1) mile south of such intersection in Lafayette County; and

(iii) A portion of Mississippi Highway 7 beginning at its intersection with Mississippi Highway 9W and running northerly to the boundary of the corporate limits of the City of Oxford, Mississippi .... $1,000,000.00.

(ii) To assist in paying the costs associated with necessary repairs to Natchez Trace Lake and surrounding roads in Pontotoc County, Mississippi ..... $1,000,000.00.

(jj) To assist the City of Houston, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Houston ..... $ 300,000.00.

(kk) To assist the Town of Houlka, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Houlka ..... $ 200,000.00.

(*ll*) To assist the City of Clinton, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements and upgrades to roads in the City of Clinton ..... $1,000,000.00.

(mm) To assist Tate County, Mississippi, in paying the costs associated with widening, safety improvements, leveling, mill and overlay of Country Club Road south of the Country Club Road/Shands Bottom Road four-way stop; however, any funds that are in excess of that needed to complete such project shall be used to assist Tate County in paying the costs associated with repaving roads in Tate County ..... $1,000,000.00.

(nn) To assist in paying the costs of construction and development related to the Cook Road Corridor project in Jackson County, Mississippi, and Harrison County, Mississippi ..... $2,000,000.00.

(oo) To assist the Town of Vaiden, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to streets in the Town of Vaiden .....$ 100,000.00.

(pp) To assist the City of Crystal Springs, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Crystal Springs ..... $ 500,000.00.

(qq) To assist the City of Hernando, Mississippi, in paying the costs associated with construction and construction engineering related to the realignment of McIngvale Road in the City of Hernando .... $1,000,000.00.

(rr) To assist Attala County, Mississippi, in paying the costs associated with the following purposes:

(i) Rehabilitation and paving of Attala County Road 2221 also known as Airport Road in Attala County;

(ii) Base repair and asphalt overlay of the back and front parking lots of the Attala County Justice Court Building; and

(iii) Base reconstruction and resurfacing of the parking lot of the former Jack Post Manufacturing Building in Attala County ..$ 450,000.00.

(ss) To assist the City of Kosciusko, Mississippi, in paying the costs associated with making improvements and upgrades to South Huntington Street and other streets in the City of Kosciusko, Mississippi .. $ 750,000.00.

(tt) To assist in paying the costs associated with the repair, rehabilitation, resurfacing, construction and reconstruction, including the widening of and addition of lanes to Scott Road in the City of Lucedale, Mississippi, from its intersection with Mississippi Highway 26 to its intersection with Mississippi Highway 63 in the City of Lucedale ..... $ 350,000.00.

(uu) To assist in paying the costs associated with planning, design, construction, repair, renovation, replacement, expansion of and other improvements to infrastructure at the Columbia-Marion County Airport in Marion County, Mississippi ..... $ 250,000.00.

(vv) To assist in paying the costs associated with construction and development of a bridge at the industrial park/port in Itawamba County, Mississippi ..... $ 500,000.00.

(ww) To assist Lincoln County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in Lincoln County ..... $ 500.000.00.

(xx) To assist the City of Brookhaven, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Brookhaven .....$ 500,000.00.

(yy) To assist the City of Farmington, Mississippi, in paying the costs associated with expansion of and upgrades and improvements to the city's infrastructure ..... $ 500,000.00.

(zz) To assist the City of Carthage, Mississippi, in paying the costs associated with making improvements to portions of Valley Street, Williams Street, Franklin Street and McMillan Park Road in the City of Carthage ..... $ 500,000.00.

(aaa) To assist the Itawamba County Railroad Authority in paying a portion of the costs associated with the repair, rehabilitation, construction, reconstruction, upgrading and improvement of the existing railroad line and related facilities running from the City of Amory, Mississippi, to the City of Fulton, Mississippi, including projects necessary to ensure safety and structural integrity of the rail line, rail beds and bridges ... $1,500,000.00.

(bbb) To assist in paying costs associated with improvements at the Columbia Training School in the City of Columbia, Mississippi ..... $ 500,000.00.

(ccc) To assist the City of Louisville, Mississippi, in paying the costs associated with constructing a road and other transportation infrastructure in the City of Louisville that will provide and improve access to land owned by the city designated for an economic development project on or near the location of Winston Plywood & Veneer ..... $ 500,000.00.

(ddd) To assist the New Site Water Association in paying the costs associated with repairing a water tank that is located adjacent to the Piney Grove Campground in Prentiss County, Mississippi ..... $ 250,000.00.

(eee) To assist Quitman County, Mississippi, in paying the costs of construction, furnishing and equipping of a passenger train depot in Marks, Mississippi, specifically, to reimburse the Four Hundred Twenty Thousand Dollar ($420,000.00) loan from Quitman County general fund 001 to help with the construction of the Amtrak shelter in Marks, Mississippi. The amount of Eighty Thousand Dollars ($80,000.00) may be used to purchase and remodel an existing building next to the new Amtrak stop that will serve as a waiting area and provide restroom facilities for Amtrak passengers and waiters ..... $ 500,000.00.

(fff) To assist the City of Saltillo, Mississippi, in paying the costs associated with a project involving the city's wastewater system and/or repair of sinkholes in the city ..... $ 250,000.00.

(ggg) To assist Lafayette County, Mississippi, in paying the costs associated with the extension of West Oxford Loop in Lafayette County ..... $1,000,000.00.

(hhh) To assist the Tupelo Public School District in paying the costs associated with roofing Church Street Elementary School in Tupelo, Mississippi ..... $ 400,000.00.

(iii) To assist the City of Baldwyn, Mississippi, in paying the costs associated with making improvements and upgrades to a portion of the city's natural gas system transmission system line and related infrastructure ..... $1,000,000.00.

(jjj) To assist Harrison County, Mississippi, in paying the costs associated with the construction, furnishing and equipping of an expansion of the Harrison County Law Enforcement Training Academy ..... $ 800,000.00.

(kkk) To assist the Town of Monticello, Mississippi, in paying the cost of necessary improvements to the U.S. Highway 84 frontage road between S.R. 27 and Old Highway 27 project in the Town of Monticello ... $ 450,000.00.

(*lll*) To assist the Lamar County School District in paying the cost of repairs, renovations and capital improvements necessitated by the consolidation of the Lumberton County School District into the Lamar County School District ..... $1,000,000.00.

(mmm) To assist in paying the costs associated with repair, rehabilitation, and related construction activities for the Mississippi Center for Innovation and Technology in the City of Vicksburg ..... $2,500,000.00.

(nnn) To assist the Mississippi's Toughest Kids Foundation in paying the costs associated with:

(i) Design, preplanning, construction, furnishing and equipping of buildings and related facilities at Camp Kamassa in Copiah County, Mississippi; and

(ii) Design, preplanning, construction and development of infrastructure at Camp Kamassa in Copiah County, Mississippi .... $1,000,000.00.

(ooo) To assist in paying the costs associated with construction, furnishing and equipping the Mississippi Children's Museum-Meridian in Meridian, Mississippi ..... $2,000,000.00.

(ppp) To assist the Mississippi Department of Transportation in paying the costs associated with upgrades to Highway 8 starting at U.S. Highway 61 and extending to Bishop Road in Bolivar County ..... $1,000,000.00.

(qqq) To assist Jasper County, Mississippi, in paying the costs associated with the paving of County Road 6 in Jasper County .... $ 100,000.00.

(rrr) To assist Jasper County, Mississippi, in paying the costs associated with upgrades to CR 1591 leading toward the Hol-Mac facility in Bay Springs ..... $ 50,000.00.

(sss) To assist Lowndes County, Mississippi, in paying the costs associated with the construction of a portion of Charleigh Ford, Jr. Drive extending from Artesia Road to Mims Road ..... $1,000,000.00.

(ttt) To assist the Mississippi Department of Transportation in paying the cost of completing the last mile of U.S. Highway 61 in Claiborne County, Mississippi, as contemplated in the 1987 Four-Lane Highway Program ..... $1,000,000.00.

(uuu) To assist the Division of State Aid Road Construction in paying the costs associated with the completion of construction repairs on Parks Road in Drew, Mississippi ..... $ 300,000.00.

(vvv) To assist the Rodney History and Preservation Society in paying the costs associated with the repair and renovation of the historic Rodney Presbyterian Church in the Rodney Center Historic District .. $ 280,000.00.

(www) To assist the Summit Community Development Foundation under a Memorandum of Understanding (MOU) with the IRS, in paying the costs associated with (i) the Water Stand Pipe lighting installation and landmark marker, and (ii) the acquisition, development and establishment of a town park in Summit, Mississippi ..... $ 150,000.00.

(xxx) To assist the City of Ripley, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Ripley ..... $ 500,000.00.

(yyy) To assist the Town of Byhalia, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Byhalia ..... $ 500,000.00.

(zzz) To assist the City of Natchez, Mississippi, in providing matching funds for federal funds for emergency watershed projects in the city ..... $ 900,000.00.

(aaaa) To assist the City of Greenville, Mississippi, in paying the costs associated with the construction and extension of Colorado Street from its intersection with George Abraham Boulevard southerly to VFW Road in the City of Greenville, including costs associated with land acquisition and professional services for such project ..... $1,000,000.00.

(bbbb) To assist the City of New Albany, Mississippi, in paying the costs associated with repair, resurfacing, maintenance and other improvements to roads and streets and sewer repairs in the City of New Albany ..... $ 500,000.00.

(cccc) To assist Choctaw County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in Choctaw County ..... $ 250,000.00.

(dddd) To assist Webster County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in Webster County ..... $ 250,000.00.

(eeee) To assist the City of Batesville, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Batesville ..... $ 350,000.00.

(ffff) To assist the Town of Sardis, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Sardis ..... $ 250,000.00.

(gggg) To assist Newton County, Mississippi, in paying the costs asso-

ciated with overlaying portions of Turkey Creek Road and Simkins Road in Newton County ..... $ 225,000.00.

(hhhh) To assist Hancock County, Mississippi, in paying the costs associated with repair of Crane Creek Bridge No. 32 in Hancock County ..... $ 500,000.00.

(iiii) To assist Stone County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in Stone County ..... $ 150,000.00.

(jjjj) To assist the City of Southaven, Mississippi, in paying the costs associated with infrastructure improvements in the Greenbrook and Carriage Hills neighborhoods in the City of Southaven ..... $ 500,000.00.

(kkkk) To assist the City of Wiggins, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to Hall Road in the City of Wiggins ..... .$ 500,000.00.

(*llll*) [Deleted].

(mmmm) [Deleted].

(nnnn) To assist the Town of North Carrollton, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to Marshall Elementary School Road in the Town of North Carrollton ..... $ 100,000.00.

(oooo) To assist the Town of Kilmichael, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to Binford Street in the Town of Kilmichael ..... $ 200,000.00.

(pppp) To assist the City of Bruce, Mississippi, in paying the costs associated with the following purposes:

(i) Repairs, resurfacing and other improvements to roads in the City of Bruce; and

(ii) Construction of walking and bicycle trails in the municipality ..... $ 200,000.00.

(qqqq) To assist Jones County, Mississippi, in paying the costs associated with repair and replacement of the Lower Myrick Road Bridge in Jones County ..... $ 380,000.00.

(rrrr) To assist Jones County, Mississippi, in paying the costs associated with repair and replacement of the Ellisville - Tuckers Crossing Bridge in Jones County ..... $1,200,000.00.

(ssss) To assist Clarke County, Mississippi, in paying the costs associated with repair and replacement of a bridge on County Road 360 in Clarke County ..... $ 480,000.00.

(tttt) To assist Pearl River County, Mississippi, in paying the costs associated with repairs, leveling, resurfacing and other improvements to a portion of FZ Goss Road located between County Line Road and West Union Road in Pearl River County ..... $ 525,000.00.

(uuuu) To assist the City of Meridian, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to the 22nd Avenue-Interstate 20/Interstate 59 Overpass ..... $ 565,000.00.

(vvvv) To assist the City of Pass Christian, Mississippi, in paying the

costs associated with repairs, resurfacing and other improvements to roads in the City of Pass Christian ..... $ 400,000.00.

(wwww) To assist the Town of Mantachie, Mississippi, in paying the costs associated with improvements to the town's water system and sewer system infrastructure ..... $ 150,000.00.

(xxxx) To assist Leake County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to Barnes Road in Leake County ..... $ 300,000.00.

(yyyy) To assist Holmes County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to Emory Road beginning at its intersection with U.S. Highway 51 and running westerly to Interstate 55 in Holmes County ..... $ 300,000.00.

(zzzz) To assist the Town of Sallis, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Sallis $ .....100,000.00.

(aaaaa) To assist the Town of Ethel, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Ethel ..... $ 100,000.00.

(bbbbb) To assist the City of Senatobia, Mississippi, in paying the costs associated with repairs, reconstruction, resurfacing and other improvements to Court Street in the City of Senatobia; however, any funds that are in excess of that needed to complete such project shall be used to assist the City of Senatobia in paying the costs associated with repairs, reconstruction, resurfacing and other improvements to Ward Street in the City of Senatobia ..... $ 500,000.00.

(ccccc) To assist the Town of Lambert, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Lambert ..... $ 200,000.00.

(ddddd) To assist Greene County, Mississippi, in paying the costs associated with repair of a bridge on Freeman Town Road in Greene County ..... $ 250,000.00.

(eeeee) To assist the City of Jackson, Mississippi, in paying the costs associated with repair of a bridge on Hawthorne Drive between Sherwood Drive and Robin Drive in the City of Jackson ..... $ 50,000.00.

(fffff) To assist Lee County, Mississippi, in paying the costs associated with infrastructure improvements within and/or near the Hive Industrial site in Lee County ..... $ 500,000.00.

(ggggg) To assist the City of Senatobia, Mississippi, in paying the costs associated with acquisition and repair of the New Imaging Water Association and related facilities ..... $ 200,000.00.

(hhhhh) To assist the Town of Bentonia, Mississippi, in paying costs associated with improvements to the town's sewer system ... $ 525,000.00.

(iiiii) To assist the Itawamba County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in Itawamba County ..... $ 250,000.00.

(jjjjj) To assist the Town of New Hebron, Mississippi, in paying the costs

associated with repairs, resurfacing and other improvements to roads in the Town of New Hebron ..... $ 50,000.00.

(kkkkk) To assist the Town of Blue Mountain, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Blue Mountain ..... $ 100,000.00.

(*lllll*) To assist the Town of Walnut, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Walnut ..... $ 100,000.00.

(mmmmm) To assist the Town of Falkner, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Falkner ..... $ 100,000.00.

(nnnnn) To assist the City of Olive Branch, Mississippi, in paying the costs of infrastructure improvements and upgrades as necessary, including, but not limited to, repairs, resurfacing and other improvements to roads; repair and renovation of bridges; repairs and improvements to water and wastewater systems; and dam repairs ..... $1,000,000.00.

(ooooo) To assist the CREATE Foundation in paying the costs associated with repairs, renovations and upgrades at the First Christian Church in Amory, Mississippi ..... $ 200,000.00.

(ppppp) To assist the Tougaloo College Research Development Foundation, Inc., in paying the costs associated with completion of restoration, repair, renovation and upgrades to the interior of the historic Tougaloo College site where the Freedom Riders took refuge ..... $1,000,000.00.

(qqqqq) To assist the Town of Magnolia, Mississippi, in paying the costs associated with repair, renovation and upgrades of the town's police and fire station ..... $ 500,000.00.

(rrrrr) To assist the City of Guntown, Mississippi, in paying the costs associated with the repair, replacement, renovation, demolition, construction and/or making any other improvements to the municipal structures on or near Main Street in the City of Guntown ..... $ 350,000.00.

(sssss) To assist the City of Baldwyn in paying the costs associated with repair, resurfacing and other improvements to Third Street and sewer repairs on Third Street; however, any funds that are in excess of that needed to complete such project shall be used to assist the City of Baldwyn in paying the costs associated with repairs, reconstruction, resurfacing and other improvements to streets in the City of Baldwyn ..... $ 213,000.00.

(ttttt) To assist Smith County, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in Smith County ..... $ 450,000.00.

(uuuuu) To assist the Town of Wesson, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Wesson ..... $ 100,000.00.

(vvvvv) To assist the Town of Georgetown, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the Town of Georgetown ..... $ 100,000.00.

(wwwww) To assist the City of Ocean Springs, Mississippi, in paying

the costs associated with improvements to the city's water system and sewer system infrastructure ..... $ 500,000.00.

(xxxxx) To assist the City of Gautier, Mississippi, in paying the costs associated with infrastructure improvements at Town Green in the City of Gautier ..... $ 500,000.00.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 1, § 9, eff from and after passage (approved August 29, 2018);; Laws, 2018, 1st Ex Sess, ch. 3, § 13, eff from and after passage (approved September 5, 2018); Laws, 2019, ch. 454, § 56, eff from and after passage (approved April 12, 2019); Laws, 2020, ch. 444, § 1, eff from and after passage (approved July 6, 2020).

Editor's Notes — Laws of 2018, 1st Ex Sess, ch. 3 § 12, provides:

"SECTION 12. (1) The State Treasurer shall transfer funds from the Budget Contingency Fund to the following special funds in the following amounts:

"(a) Fifty-two Million Eight Hundred Ninety-three Thousand Dollars ($52,893,000.00) to the 2018 Transportation and Infrastructure Improvements Fund created in House Bill No. 1, First Extraordinary Session of 2018;

"(b) One Million Dollars ($1,000,000.00) to the Mississippi Highway-Railroad Grade Crossing Safety Account created in Section 57-43-15; and

"(c) Seven Million Five Hundred Thousand Dollars ($7,500,000.00) to the Mississippi Railroad Improvements Fund created in Section 57-46-1.

"(2) The State Treasurer shall transfer seventy-five percent (75%) of the amount remaining in the Budget Contingency Fund after the transfers required in subsection (1) of this section into the Gulf Coast Restoration Fund created in Section 3 of this act."

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 5, 2018, designated the first three sentences of the section (1); rewrote the former last sentence, which read: "Monies deposited into the fund shall be expended, upon appropriation by the Legislature, for infrastructure projects and/or other projects that are economically beneficial that are otherwise provided by law to be funded by monies in this fund" and designated it (2); and added (2)(a) through (2)(xxxxx).

The 2019 amendment, effective April 12, 2019, in (1)(e), substituted "two (2) closed bridges on or near County Road 57" for "a closed bridge on County Road 157"; in (1)(rr), added "the following purposes" in the introductory paragraph, added (ii) and (ii), and substituted "$450,000.00" for "$150,000.00"; inserted "the Itawamba County Railroad Authority" in (1)(aa); in (1)(eee), added "specifically, to reimburse...in Marks, Mississippi" at the end of the first sentence, and added the last sentence; in (1)(vvv), substituted "Rodney History and Preservation Society" for "Rodney Foundation, Inc."; in (1)(www), substituted "Summit Community Development Foundation under a Memorandum of Understanding (MOU) with the IRS, in paying" for "Town of Summit, Mississippi, in paying" and "(i) the Water Stand Pipe lighting installation and landmark marker, and (ii) the acquisition, development and establishment of a town park in Summit, Mississippi" for "stand water pipe repairs, acquisition and upgrades in the Town of Summit"; in (hhhh), substituted "repair of Crane Creek Bridge No. 32 in Hancock County" for "replacement of a bridge on Kiln-Delisle Road located approximately one (1) mile from West Hancock Elementary School"; and deleted (*llll*) and (mmmm), which provided $150,000.00 per project for two projects in Attala County.

The 2020 amendment, effective July 6, 2020, rewrote (2)(pppp), which formerly read: "(pppp) To assist the City of Bruce, Mississippi, in paying the costs associated with repairs, resurfacing and other improvements to roads in the City of Bruce.....$ 200,000.00."; and in (2)(rrrrr), substituted "repair, replacement, renovation, demolition, construction and /or making any other improvements to the municipal structures" for "repair or replacement of roofs on municipal buildings and/or demolition or repair of structures."

CHAPTER 105.

DEPOSITORIES

Article 1. State Depositories. 27-105-1

ARTICLE 1.

STATE DEPOSITORIES.

Sec.
27-105-5. Qualification as public funds depository; authority of State Treasurer; definitions.
27-105-33. Deposit and investment of excess state funds.

§ 27-105-5. Qualification as public funds depository; authority of State Treasurer; definitions.

(1) Any financial institution maintaining a deposit-taking facility in this state whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may qualify as a public funds depository by submitting an application to the State Treasurer as provided by Section 27-105-9, if the institution has a primary capital to total assets ratio of five and one-half percent (5-1/2%) or more. That ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying institutions at June 30 of the same calendar year, and an institution shall not be a qualified depository and shall not receive any public funds unless its ratio has been certified annually by the Treasurer as meeting the prescribed requirement. Each applicant shall furnish to the State Treasurer such financial statements, balance sheets or other documentation, sworn to by a duly elected officer, on such date or dates and on such forms as the State Treasurer may require. Any knowing or willful misstatement of fact on those forms shall subject the officer swearing to them to the penalty of perjury, and the financial institution of which he is an officer shall not be eligible to serve as a depository for a period of one (1) year beginning with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, the institution shall place on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to one hundred five percent (105%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto.

(2) Any financial institution maintaining a deposit-taking facility in this state whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation and which has been in

existence for three (3) or more years may qualify as a public funds depository and public funds guaranty pool member under Section 27-105-6 by submitting an application to the State Treasurer as provided by Section 27-105-9, if the institution has a primary capital to total assets ratio of six and one-half percent (6-1/2%) or more and otherwise meets the requirements of Section 27-105-6. That ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying institutions at June 30 of the same calendar year, and an institution shall not be a member of the public funds guaranty pool unless its ratio has been certified annually by the Treasurer as meeting the prescribed requirement. Each applicant shall furnish to the State Treasurer such financial statements, balance sheets or other documentation, sworn to by a duly elected officer, on such date or dates and on such forms as the State Treasurer may require. Any knowing or willful misstatement of fact on those forms shall subject the officer swearing to them to the penalty of perjury and the financial institution of which he is an officer shall not be eligible to serve as a depository for a period of one (1) year beginning with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, the institution shall meet its security requirement of one hundred five percent (105%) by placing on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to fifty-two and one-half percent (52-1/2%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto, and executing a guarantee equal to the balance of fifty-two and one-half percent (52-1/2%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto.

(3) The term "qualified bonds, notes and liquid securities" as used in this section shall mean:

(a) All securities that are direct obligations of the United States Treasury or any other obligations fully guaranteed by the United States government.

(b) Bonds, notes and other obligations of the Federal Home Loan Bank, Federal National Mortgage Association, Federal Land Banks, Banks for Cooperatives, and Federal Intermediate Credit Banks, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the Farm Credit System Financial Assistance Corporation, the United States Postal Service, the Federal Financing Bank, the Student Loan Marketing Association, the Small Business Administration, the General Services Administration, the Washington Metropolitan Area Transit Authority, the Maritime Administration, the Export-Import Bank, the International Bank for Reconstruction and Development, the

Inter-American Development Bank, the Asian Development Bank, loan participations that carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture or other similar agencies approved by the State Treasurer.

(c) Obligations of the Tennessee Valley Authority.

(d) Legal obligation or revenue bonds of the State of Mississippi, its agencies, or any political subdivision of the state, or any municipality located in the State of Mississippi, or the Yazoo Mississippi Delta and the Mississippi Levee Districts, or the Mississippi Higher Education Assistance Corporation or its successors, or any body corporate and politic created under the laws of the State of Mississippi.

(e) General obligations issued by any other state or by a county, parish or municipality of any other state, the full faith and credit of which are pledged to the payment of principal and interest, that are rated "A" or better by any recognized national rating agency engaged in the business of rating bonds.

(f) Surety bonds of any surety company authorized to do business in the State of Mississippi.

(g) All bonds authorized as security for state funds under paragraphs (c), (d) and (e), inclusive, shall be investment quality, and any bonds under paragraphs (c), (e) and (f), inclusive, which are rated substandard by any of the appropriate supervisory authorities having jurisdiction over the depository or by any recognized national rating agency engaged in the business of rating bonds, shall not be eligible for pledging as security to the State of Mississippi by any qualified state depository. As used in this paragraph, the term "investment quality" shall mean that, at worst, the obligor of the bonds has adequate capacity to meet its financial commitments even if adverse economic conditions or changing circumstances are likely to lead to weakened capacity to do so.

No bonds shall be accepted as security for more than their stated par value or market value, whichever is lower, except bonds and obligations of the State of Mississippi and Mississippi State Highway bonds or notes, which may be accepted as security at par value or market value, whichever is greater.

The bonds, notes and liquid securities to be placed on deposit shall secure both deposits and the accrued interest thereon.

Money shall be drawn from the depositories so as to leave in each as near as practicable, its equitable proportion of state funds.

The State Treasurer is authorized and empowered to:

(i) Deposit for safekeeping in the vaults of any of the state or national banks located within this state that are members of the Federal Deposit Insurance Corporation and that have appropriate safekeeping facilities approved by the State Depository Commission, any federal reserve bank, any federal reserve branch bank, or any bank that is a member of the Federal Reserve System and is located in a city where there is a federal reserve bank or a federal reserve branch bank, the securities placed with him by financial institutions qualifying as state depositories; or

(ii) Accept, in lieu of the securities themselves, safekeeping trust receipts issued to the State Treasurer by the authorized safekeeping banks listed in subparagraph (i) above; the safekeeping trust receipts shall describe the securities and show that the securities are held for safekeeping for the account of the State Treasurer or other governmental unit. The securities so deposited shall not be commingled in any manner with the assets of the safekeeping bank.

The safekeeping banks listed in subparagraph (i) above are authorized to issue to the State Treasurer their safekeeping trust receipts based on safekeeping trust receipts issued to them by any of their correspondent banks that are members of the Federal Reserve System and are located in any federal reserve city and that have physical custody of the pledged securities.

In no event shall the State Treasurer deposit for safekeeping with any depository securities placed by the depository with the State Treasurer in qualifying as a public funds depository, nor shall he accept a safekeeping trust receipt by or from a depository covering securities it owns in order to secure state funds on deposit with it.

(4) In fulfilling the requirements of this Section 27-105-5, the State Treasurer shall:

(a) Maintain perpetual inventory of pledged collateral and perform monthly market valuations and quality ratings.

(b) Monitor and confirm, as often as deemed necessary by the Treasurer, the pledged collateral held by third party custodians.

(c) Perfect an interest in pledged collateral by having pledged securities moved into an account established in the Treasurer's name. This action shall be taken at the discretion of the Treasurer.

(d) Review the reports of each qualified public funds depository for material changes in capital accounts or changes in name, address or type of institution, record the average daily balances of public deposits held; and monitor the collateral-pledging levels and required collateral based on the average daily balances.

(e) Compare public deposit information reported by qualified public funds depositories and public depositors. That comparison shall be conducted for qualified public depositories based on established financial condition criteria of record on September 30.

(f) Verify the reports of any qualified public funds depository relating to public deposits it holds when necessary to protect the integrity of the public deposits program.

(g) Confirm public deposits, to the extent possible under current law, when needed.

(h) Require at his or her discretion the filing of any information or forms required under this chapter to be by electronic data transmission. Those filings of information or forms shall have the same enforceability as a signed writing.

(5) A qualified public funds depository shall:

(a) Within fifteen (15) days after the end of each calendar month or when requested by the Treasurer, submit to the Treasurer a written report,

under oath, indicating the average daily balance of all public deposits held by it during the reported month, required collateral, a detailed schedule of all securities pledged as collateral, selected financial information, and any other information that the Treasurer determines necessary to administer this chapter.

(b) Provide to each public depositor annually, not later than thirty (30) days following the public depositor's fiscal year end, the following information on all open accounts identified as a "public deposit" for that public depositor as of its fiscal year end, to be used for confirmation purposes: the federal employer identification number of the public funds depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type and actual account balance on deposit. Any discrepancy found in the confirmation process shall be reconciled within sixty (60) days of the public depositor's fiscal year end.

(c) Submit to the Treasurer annually, not later than sixty (60) days of the public depositor's fiscal year end, a report of all public deposits held for the credit of all public depositors at the close of business on each public depositor's fiscal year end. The annual report shall consist of public deposit information in a report format prescribed by the Treasurer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Treasurer.

(6) Public depositors shall comply with the following requirements:

(a) A public depositor shall ensure that the name of the public depositor and its tax identification number are on the account or certificate provided to the public depositor by the qualified public depository in a manner sufficient to disclose the identity of the public depositor;

(b) Not later than thirty (30) days following its fiscal year end, a public depositor shall notify the State Treasurer of its official name, address, federal tax identification number, and provide a listing of all accounts that it had with qualified public depositories, including the deposit balance in those accounts, as of its fiscal year end. A public entity established during the year shall furnish its official name, address and federal tax identification number to the State Treasurer before making any public deposit.

(7) Any information contained in a report of a qualified public funds depository required under Section 27-105-5 or 27-105-6 shall be considered confidential and exempt from disclosure and not subject to dissemination to anyone other than the State Treasurer and the State Auditor under the provisions of this chapter.

(8) The State Treasurer is empowered to assume responsibility as successor pledgee as agent on behalf of any county, municipality or other governmental unit of any and all collateral pledged before July 1, 2001, to that county, municipality or governmental unit by that public funds depository. Upon assuming responsibility as successor pledgee as provided in this subsection (8), the State Treasurer is empowered to sign such documents on behalf of any such county, municipality or governmental unit as may be required by a trustee

custodian, including, but not limited to, any documentation necessary to change the pledgee from the county, municipality or governmental unit as pledgee to the State Treasurer as agent.

(9) As used in this section and Section 27-105-6, the following terms shall have the meanings set forth below:

(a) The term "primary capital" means the sum of common stockholders' equity capital, including common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values; noncumulative perpetual preferred stock, including any related surplus; and minority interests in the equity capital accounts of consolidated subsidiaries; the allowance for loan and lease losses; cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least twenty (20) years) and any related surplus; perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative; hybrid capital instruments, including mandatory convertible debt securities; term subordinated debt and intermediate-term preferred stock (original average maturity of five (5) years or more) and any related surplus; and net unrealized holding gains on equity securities.

(b) The term "assets classified loss" means:

(i) When measured as of the date of examination of the financial institution, those assets that have been determined by an evaluation made by a state or federal examiner as of that date to be a loss; and

(ii) When measured as of any other date, those assets:

(A) That have been determined: 1. by an evaluation made by a state or federal examiner at the most recent examination of the financial institution to be a loss, or 2. by evaluations made by the financial institution since its most recent examination to be a loss; and

(B) That have not been charged off from the financial institution's books or collected.

(c) The term "intangible assets" means those assets that would be required to be reported in the item for intangible assets in a Federal Deposit Insurance Corporation (FDIC) banking institution's "Reports of Condition and Income" (Call Reports), regardless of whether the institution is insured by the FDIC.

(d) The term "mandatory convertible debt" means a subordinated debt instrument meeting the requirements of the Federal Deposit Insurance Corporation that requires the issuer to convert the instrument into common or perpetual preferred stock by a date at or before the maturity of the debt instrument. The maturity of these instruments must be twelve (12) years or less.

(e) The term "mortgage servicing rights" means those assets (net of any related valuation allowances) that result from contracts to service loans

secured by real estate (that have been securitized or are owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

(f) The term "perpetual preferred stock" means a preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder and that has no other provisions that will require future redemption of the issue. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(g) The term "total assets" means the average of total assets of any financial institution that are or would be included in a Federal Deposit Insurance Corporation (FDIC) banking institution's "Reports of Condition and Income" (Call Reports), regardless of whether the institution is insured by the FDIC, plus the allowance for loan and lease losses, minus assets classified loss and minus intangible assets other than mortgage servicing rights.

(h) The term "average daily balance" means the average daily balance of public deposits of each governmental unit held during the reported month. The average daily balances must be determined by totaling, by account, the daily balance held by the depositor and then dividing the total by the number of calendar days in the month. Deposit insurance is then deducted from each public depositor's balance and the resulting amounts are totaled to obtain the average daily balance.

(i) The term "public funds" means funds in which the entire beneficial interest is owned by a governmental unit or funds held in the name of a public official of a governmental unit charged with the duty to receive or administer funds and acting in such official capacity.

(j) The term "governmental unit" means the State of Mississippi, and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not such body or instrumentality has the authority to levy taxes or to sue or be sued in its own name. Further, it shall mean any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including, but not limited to any county, municipality, school district, community hospital as defined in Section 41-13-10, airport authority or other instrumentality thereof, whether or not such body or instrumentality has the authority to levy taxes or to sue or be sued in its own name. It is the intent to include all state and political subdivisions or instrumentalities thereof whether specifically recited herein or not.

HISTORY: Codes, Hemingway's 1917, § 4192; 1930, § 4326; 1942, § 9128; Laws, 1910, ch. 224; Laws, 1918, ch. 153; Laws, 1932, ch. 177; Laws, 1934, ch. 215; Laws, 1936, ch. 169; Laws, 1942, ch. 142; Laws, 1948, ch. 205, § 1; Laws, 1969, Ex Sess ch. 53, § 6; Laws, 1971, ch. 421, § 1; Laws, 1972, ch. 443, § 2; Laws, 1979, ch. 417, § 9; Laws, 1985, ch. 312, § 2; Laws, 1988, ch. 473, § 2; Laws, 1990, ch. 327, § 1;

Laws, 1990, ch. 328, § 1; Laws, 1995, ch. 567, § 2; Laws, 1999, ch. 404, § 1; Laws, 2000, ch. 408, § 1; Laws, 2003, ch. 336, § 1, eff from and after July 1, 2003; Laws, 2018, ch. 348, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment, in (3), twice inserted "other" preceding "state" in (e), and in the first paragraph of (g), deleted "(d)" following "under paragraphs (c)" and added the last sentence.

§ 27-105-33. Deposit and investment of excess state funds.

It shall be the duty of the State Treasurer and the Executive Director of the Department of Finance and Administration on or about the tenth day of each month, and in their discretion at any other time, to analyze carefully the amount of cash in the General Fund of the state and in all special funds credited to any special purpose designated by the State Legislature or held to meet the budgets or appropriations for maintenance, improvements and services of the several institutions, boards, departments, commissions, agencies, persons or entities of the state, and to determine in their opinion when the cash in such funds is in excess of the amount required to meet the current needs and demands of no more than seven (7) business days on such funds and report their findings to the Governor. It shall be the duty of the State Treasurer to provide a cash flow model for forecasting revenues and expenditures on a bimonthly basis and providing technical assistance for its operation. The Department of Finance and Administration shall use the cash flow model furnished by the State Treasurer, in analyzing the amount of funds on deposit and available for investment.

The State Treasurer is hereby authorized, empowered and directed to invest all such excess general and special funds of the state in the following manner:

(a) Funds shall be allocated equally among all qualified state depositories which do not have demand accounts in excess of One Hundred Fifty Thousand Dollars ($150,000.00) until each qualified depository willing to accept the same shall have on deposit or in security repurchase agreements or in other securities authorized in paragraph (d) of this section at interest the sum of Three Hundred Thousand Dollars ($300,000.00). For the purposes of this subsection, no branch bank or branch office shall be counted as a separate depository.

(b) The balance, if any, of such excess general and special funds shall be offered to qualified depositories of the state on a pro rata basis as provided in Section 27-105-9. For the purposes of this subsection, the pro rata share of each depository shall be reduced by the amount of the average daily collected earning balance of demand deposits maintained by the State Treasurer pursuant to Section 27-105-9 during the preceding calendar year, and such reduction shall be allocated pro rata among other eligible depositories.

(c) Funds offered pursuant to paragraphs (a) and (b) above shall be invested for periods of up to one (1) year, and shall bear interest at an interest rate no less than that numerically equal to the bond equivalent yield

on direct obligations of the United States Treasury of comparable maturity, as determined by the State Treasurer. In determining such rate, the State Treasurer shall consider the Legislature's desire to distribute funds equitably throughout the state to the maximum extent possible.

(d) To the extent that the State Treasurer shall find that general and special funds cannot be invested pursuant to paragraphs (a), (b) and (c) of this section for the stated maturity up to one (1) year, the Treasurer may invest such funds, together with any other funds required for current operation, as determined pursuant to this section, in the following:

(i) Time certificates of deposit or interest-bearing accounts with qualified state depositories. For those funds determined under prudent judgment of the State Treasurer to be made available for investment in time certificates of deposit, the rate of interest paid by the depositories shall be determined by rules and regulations adopted and promulgated by the State Treasurer which may include competitive bids. At the time of investment, the interest rate on such certificates of deposit under the provisions of this subparagraph shall be a rate not less than the bond equivalent yield on direct obligations of the United States Treasury with a similar length of maturity.

(ii) Direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the government of the United States.

(iii) United States government agency, United States government instrumentality or United States government sponsored enterprise obligations, the principal and interest of which are fully guaranteed by the government of the United States, such as the Government National Mortgage Association; or United States governmental agency, United States government instrumentality or United States government sponsored enterprise obligations, the principal and interest of which are guaranteed by any United States government agency, United States government instrumentality or United States government sponsored enterprise contained in a list promulgated by the State Treasurer.

(iv) Direct security repurchase agreements and reverse direct security repurchase agreements of any federal book entry of only those securities enumerated in subparagraphs (ii) and (iii) above. "Direct security repurchase agreement" means an agreement under which the state buys, holds for a specified time, and then sells back those securities and obligations enumerated in subparagraphs (ii) and (iii) above. "Reverse direct securities repurchase agreement" means an agreement under which the state sells and after a specified time buys back any of the securities and obligations enumerated in subparagraphs (ii) and (iii) above. At least eighty percent (80%) of the total dollar amount in all repurchase agreements at any one time shall be pursuant to contracts with qualified state depositories.

(v) Bonds issued, assumed or guaranteed by the Country of Israel, provided that:

1. Investments in such instruments shall be denominated in United States currency;

2. Such bonds must be of investment grade as rated by at least one (1) nationally recognized statistical rating agency; and

3. The amount of funds invested in such bonds at any time shall not exceed Twenty Million Dollars ($20,000,000.00).

(e) For the purposes of this section, direct obligations issued by the United States of America shall be deemed to include securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions of 15 USCS Section 80(a)-1 et seq., provided that the portfolio of such investment company or investment trust is limited to direct obligations issued by the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and to repurchase agreements fully collateralized by direct obligations of the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and the investment company or investment trust takes delivery of such collateral for the repurchase agreement, either directly or through an authorized custodian. The State Treasurer and the Executive Director of the Department of Finance and Administration shall review and approve the investment companies and investment trusts in which funds invested under paragraph (d) of this section may be invested. The total dollar amount of funds invested in all open-end and closed-end management type investment companies and investment trusts at any one time shall not exceed twenty percent (20%) of the total dollar amount of funds invested under paragraph (d) of this section.

(f) Investments authorized by subparagraphs (ii) and (iii) of paragraph (d) shall mature on such date or dates as determined by the State Treasurer in the exercise of prudent judgment to generate a favorable return to the state and will allow the monies to be available for use at such time as the monies will be needed for state purposes. However, the maturity of securities purchased as enumerated in subparagraphs (ii) and (iii) shall not exceed ten (10) years from date of purchase. Special funds shall be considered those funds created constitutionally, statutorily or administratively which are not considered general funds. All funds invested for a period of thirty (30) days or longer under paragraph (d) shall bear a rate at least equal to the current established rate under paragraph (c) of this section.

(g) Any interest-bearing deposits or certificates of deposit shall not exceed at any time the amount insured by the Federal Deposit Insurance Corporation in any one (1) banking institution, the Federal Savings and Loan Insurance Corporation in any one (1) savings and loan association, or other deposit insurance corporation approved by the State Treasurer, unless the uninsured portion is collateralized by the pledge of securities in the manner provided by Section 27-105-5.

(h) Unless otherwise provided, income from investments authorized by the provisions of this subsection shall be credited to the State General Fund.

(i) Not more than Five Hundred Thousand Dollars ($500,000.00) of funds may be invested with foreign financial institutions, and the State Treasurer may enter into price contracts for the purchase or exchange of foreign currency or other arrangements for currency exchange in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) upon specific direction of the Department of Economic and Community Development. The State Treasurer shall promulgate all rules and regulations for applications, qualifications and any other necessary matters for foreign financial institutions.

Any liquidating agent of a depository in liquidation, voluntary or involuntary, shall redeem from the state any bonds and securities which have been pledged to secure state funds and such redemption shall be at the par value or market value thereof, whichever is greater; otherwise, the liquidating agent or receiver may pay off the state in full for its deposits and retrieve the pledged securities without regard to par or market value.

The State Treasurer and the Executive Director of the Department of Finance and Administration shall make monthly reports to the Legislative Budget Office containing a full and complete statement of all funds invested by virtue of the provisions of this section and the revenues derived therefrom and the expenses incurred therewith, together with all such other information as may seem to each of them as being pertinent to inform fully the Mississippi Legislature with reference thereto.

The State Treasurer shall not deposit any funds on demand deposit with any authorized depository, unless such depository has contracted for interest-bearing accounts or time certificates of deposit.

Notwithstanding the foregoing, any financial institution not meeting the prescribed ratio requirement set forth in Section 27-105-5 whose accounts are insured by the Federal Deposit Insurance Corporation, or any successor to that insurance corporation, may receive state funds in an amount not exceeding the amount which is insured by such insurance corporations and may qualify as a state depository to the extent of such insurance for this purpose only. The paid-in and earned capital funds of such financial institution shall not be included in the computations specified in Section 27-105-9(a) and (b).

HISTORY: Codes, 1930, § 4338; 1942, § 9141; Laws, 1928, Ex. Sess., ch. 79; Laws, 1938, ch. 182; Laws, 1969 Ex. Sess., ch. 53, § 3; Laws, 1972, ch. 443, § 1; ch. 469, § 1; Laws, 1974, ch. 563, § 2; Laws, 1979, ch. 417, § 12; Laws, 1981, ch. 481, § 2; Laws, 1984, ch. 488, § 180; Laws, 1986, ch. 470; Laws, 1988, ch. 473, § 5; Laws, 1988, ch. 518, § 18; Laws, 1989, ch. 540, § 2; Laws, 1989, ch. 544, § 163; Laws, 1990, ch. 570, § 2; Laws, 1992, ch. 367, § 2; Laws, 1992, ch. 484, § 17; Laws, 1993, ch. 436, § 1; Laws, 1995, ch. 321, § 2; Laws, 2014, ch. 401, § 1, eff from and after July 1, 2014; Laws, 2018, ch. 421, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment added (d)(v).

CHAPTER 111.

PAYMENT CREDIT VOUCHERS AS CREDIT AGAINST INCOME AND CORPORATION FRANCHISE TAX LIABILITIES [REPEALED]

§ 27-111-1. Repealed.

Editor's Notes — Former § 27-111-1 pertained to use of payment credit vouchers as credit against income tax and corporation franchise tax liability of certain telecommunications enterprises providing broadband telecommunications services to institutions of higher learning.

CHAPTER 115.

ALYCE G. CLARKE MISSISSIPPI LOTTERY LAW.

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§ 27-115-1. Short title.

This chapter shall be referred to as the "Alyce G. Clarke Mississippi Lottery Law."

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 1, eff from and after September 1, 2018.

§ 27-115-3. Legislative intent.

The Legislature recognizes that the operations of a state lottery are unique activities for state government and that a corporate structure will best enable the lottery to be managed in an entrepreneurial and business-like manner. It is the intent of the Legislature that the Mississippi Lottery Corporation shall be accountable to the Governor, the Legislature, and the people of the state through a system of audits, reports, and disclosures as required by this chapter.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 2, eff from and after September 1, 2018.

§ 27-115-5. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(a) "Corporation" means the Mississippi Lottery Corporation.

(b) "Lottery" means any game of chance approved by the corporation and operated pursuant to this chapter, which utilizes the sale of paper tickets for various intrastate and multistate or multisovereign lottery games (such as Pick-3, Pick-4, Mega Millions, Powerball), and "instant tickets" as defined, but specifically excluding any form of "video lottery" or use of "video lottery terminal" as defined.

(c) "Major procurement" means any item, product or service in the amount of One Million Dollars ($1,000,000.00) or more, including, but not limited to, major advertising contracts, annuity contracts, prizes, products, and services unique to the Mississippi lottery.

(d) "Net proceeds" means gross lottery revenues minus amounts paid as prizes and expenses of operation of the lottery.

(e) "Person" means any individual, corporation, partnership, unincorporated association or other legal entity.

(f) "President" means the President of the Mississippi Lottery Corporation, who shall also serve as chief executive officer of the corporation.

(g) "Retailer" means any person with whom the corporation has contracted to sell lottery tickets to the public.

(h) "Security" means the protection of information that would provide an unfair advantage to any individual involved in the operation of the lottery, protection and preservation of the integrity of lottery games and operations, as well as measures taken to prevent crimes against the corporation and its retailers.

(i) "Vendor" means any person who has entered into a contract with the corporation.

(j) "Fiscal year" means the fiscal year used by the State of Mississippi government.

(k) "Board" means the Mississippi Lottery Corporation Board of Directors.

(*l*) "Instant ticket" means a lottery game in which a player scratches a coating from one or more play areas on a ticket to determine if he or she has won, as indicated by the symbols and words that are revealed.

(m) "Video lottery" and "video lottery terminal" means any electronic interactive computerized game machine or device equipped with a video screen and buttons, keys, a keyboard, touchscreen or other input device allowing input by an individual player and into which the player inserts coins, tokens, currency or other representation of value (including, but not limited to, an electronic card, ticket or other thing on which value is recorded electronically) as consideration in order for play of a game to be available, and through which, as a result of the play of a game, the player may receive free games, credits redeemable for cash or a noncash prize, or some other thing of value, whether or not received directly from the device, or nothing, determined wholly or predominantly by chance.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 3, eff from and after September 1, 2018.

§ 27-115-7. State lottery created; Mississippi Lottery Corporation created.

(1) There is hereby created a state lottery, which shall be administered by a corporation which shall be known as the "Mississippi Lottery Corporation." The corporation shall be managed in such a manner that enables the people of the state to benefit from its profits and to ensure the integrity of the lottery.

(2) The existence of the corporation, which shall be domiciled in the State of Mississippi, shall begin upon the appointment of all five (5) members of the board as provided in Section 27-115-9.

(3) The exclusive venue for any action or matter against the corporation arising out of or in connection with the issuance, nonissuance, delivery or failure to deliver a lottery ticket or payment or nonpayment of a lottery prize is the county in which its corporate headquarters is located, and the circuit court for that county has exclusive jurisdiction thereof. For purposes of court costs, the corporation shall be a private corporation.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 4, eff from and after September 1, 2018.

§ 27-115-9. Mississippi Lottery Corporation Board of Directors; membership; terms; meetings.

(1) The affairs of the corporation shall be administered by the Mississippi Lottery Corporation Board of Directors. The board shall be composed of five (5) members appointed by the Governor, with the advice and consent of the Senate. The Commissioner of Revenue and the State Treasurer shall serve as ex officio, nonvoting members. Members appointed when the Senate is not in session shall serve only until the end of the next regular session, unless confirmed by the Senate.

(2)(a) Members of the board shall be residents of the State of Mississippi, and the Governor shall take into account the goals of geographic, racial, gender and other categories of diversity when nominating board members.

(b) Of the initial appointees, the members' terms shall be staggered as follows: one (1) term to expire on December 31, 2019; December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. After the expiration of the initial terms, members of the board shall serve terms of five (5) years.

(c) Members may serve beyond the end of their respective terms until their successors have been appointed and qualified. No member shall serve more than two (2) consecutive five-year terms. Members may be removed by the Governor for neglect of duty, misfeasance or nonfeasance in office. The board shall annually elect a chairman from among its voting members.

(3) Appointed members of the board shall be entitled to per diem compensation pursuant to Section 25-3-69 paid by the corporation and shall be reimbursed by the corporation for necessary travel and other reasonable expenses incurred in the performance of their official duties. No appointed member of the board shall be considered a public officer.

(4) The board, upon the initial call of the Governor and the chairman thereafter, shall meet at least monthly for the first eighteen (18) months and at such other times as the chairman may determine. Three (3) voting members of the board shall constitute a quorum. The board shall also meet upon call of three (3) or more of the voting members of the board. The board shall keep accurate and complete records of all its meetings.

(5) All meetings of the board shall be subject to the Open Meetings Act in Section 25-41-1 et seq.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 5, eff from and after September 1, 2018.

§ 27-115-11. Appointment of president of the corporation; approval or rejection of nomination by Governor.

(1) The president of the corporation shall be appointed by the board subject to the approval of the Governor. The Governor shall, within thirty (30) days after receiving the nomination of the president in writing, either approve or reject the nomination. Failure to take either action within the required time

shall constitute approval by the Governor. If the Governor rejects the nomination of the president, then the board shall submit a different nominee to the Governor. The president shall manage the daily affairs of the corporation and shall have such powers and duties as specified by this chapter, by the board, and any rules or regulations adopted by the board. The president shall not be a member of the board. The president shall serve at the will and pleasure of the board.

(2) The president shall employ such personnel as he or she deems necessary. All personnel shall serve at the will and pleasure of the president, unless otherwise specified by the president.

(3) The board shall set the salary of the president.

(4) No employee shall be a member of the board.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 6, eff from and after September 1, 2018.

§ 27-115-13. Corporation records deemed public records; exceptions.

(1) Except as provided under Section 27-115-23, all records of the corporation shall be deemed public records and subject to public inspection as provided by Section 25-61-1 et seq. unless:

(a) The record relates to or was provided by a confidential source or informant and relates to lottery security, applicant, vendor, or retailer qualifications or conduct;

(b) The record involves a trade secret of the corporation or of a vendor;

(c) The disclosure of the record would endanger the security of the lottery or its retailers; or

(d) The record is covered by another exemption under federal or state law.

(2) Records pertaining to the security of lottery operations, whether current or proposed, the security director, and the division handling security shall be deemed to be records containing security procedures, investigative techniques, or internal security information.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 7, eff from and after September 1, 2018.

§ 27-115-15. Duties of the board.

(1) The board shall provide the president with private sector perspectives on the operation of a business, large marketing enterprise, and the like. The board shall:

(a) Approve, disapprove, amend or modify the budget recommended by the president for the operation of the corporation.

(b) Approve, disapprove, amend or modify the terms of major procurements recommended by the president.

(c) Serve as a board of appeals for any denial, revocation or cancellation by the president of a contract with a lottery retailer.

(d) Adopt such administrative rules and regulations as may be necessary to carry out and implement its powers and duties, the operations of the corporation, the conduct of lottery games in general and any other matters necessary or desirable for the efficient and effective operation of the lottery or convenience of the public.

(2) Any policies adopted by authority of this section or any other section of this chapter must be published and posted on the corporation's website thirty (30) days prior to becoming effective.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 8, eff from and after September 1, 2018.

§ 27-115-17. Prohibited games; administrative rules and regulations for the conduct of lottery games and operations; hearings for violations of chapter; relation to Mississippi Gaming Commission.

(1) The board shall not authorize, conduct or administer lottery games involving the use of a "video lottery terminal" as defined or any mobile or Internet-based or monitor-based interactive game, or any simulated casino-style game, including video poker, video roulette, slot machines or video blackjack, or any variant of these prohibited games.

(2) The board may adopt administrative rules and regulations for the conduct of specific lottery games and operations, including, but not limited to, administrative rules and regulations specifying:

(a) The types of lottery games to be conducted which utilize the sale of paper tickets for various intrastate and multistate or multisovereign lottery games (such as Pick-3, Pick-4, Mega Millions, Powerball) and "instant tickets" as defined.

(b) The sale price of tickets.

(c) The number and amount of prizes.

(d) The methods to be used in selling tickets for lottery games; provided, however, the corporation shall not permit any lottery game to be played or ticket to be purchased, sold or played by any method involving (i) a video lottery terminal or (ii) by any personal computer, tablet, smartphone, mobile device or other similar equipment or type of device.

(e) The methods and location of selecting or validating winning tickets.

(f) The frequency and the means of conducting drawings which shall be open to the public.

(g) The manner of payment of prizes.

(h) The frequency of games and drawings.

(i) The manner and amount of compensation to lottery retailers, except all compensation shall be uniform.

(j) Any other matters necessary to carry out this chapter and necessary for the efficient and effective operation of the lottery or for the convenience of the public.

(3) In all other matters, the board shall advise and make recommendations. In addition, the board shall:

(a) Conduct hearings upon complaints charging violations of this chapter or of administrative rules and regulations adopted by the corporation and shall conduct such other hearings as may be provided by administrative rules and regulations.

(b) Periodically, review the performance of the corporation and:

(i) Advise the president and make recommendations to him or her regarding operations of the corporation; and

(ii) Identify potential improvements in this chapter, the administrative rules and regulations of the corporation, and the management of the corporation.

(c) Request from the corporation any information the board determines to be relevant to its duties.

(4) Nothing in this chapter shall be construed to govern, affect or limit gaming operations at a licensed gaming facility nor shall this chapter be construed to supersede or preempt the authority of the Mississippi Gaming Commission as it relates to gaming operations occurring at a licensed gaming facility.

(5) Nothing in this chapter shall prohibit a licensed gaming facility under the Mississippi Gaming Commission from applying and operating as a lottery retailer under this chapter.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 9, eff from and after September 1, 2018.

§ 27-115-19. Powers and duties of corporation; immunity from liability.

(1) The corporation shall conduct and administer lottery games to result in maximization of revenues to the State of Mississippi. The corporation, its employees, and the members of the board shall provide for the efficient and effective operation of lottery games which ensure the integrity of the lottery and maintain the dignity of the state and the general welfare of its citizens.

(2) The corporation, in pursuing the objectives and purposes of this chapter, may:

(a) Sue and be sued in its corporate name.

(b) Adopt a corporate seal and a symbol.

(c) Hold patents, copyrights, trademarks, and service marks and enforce its rights with respect thereto.

(d) Register to do business in Mississippi and appoint agents upon which process may be served.

(e) Enter into written agreements with one or more other states or sovereigns for the operation, marketing and promotion of a joint lottery or joint-lottery games.

(f) Acquire real property and make improvements thereon.

(g) Make, solicit and request proposals and offers, and execute and effectuate any and all agreements or contracts, including, but not limited to:

(i) Contracts that provide for the placement of commercial advertising on tickets.

(ii) Contracts for the purchase and/or lease of real property as are necessary for the operation and promotion of the lottery.

(iii) Any contract and/or agreement necessary for the implementation, operation, and promotion of the lottery and this chapter.

(h) Adopt and amend such bylaws, rules and regulations, with the approval of the board as it deems necessary to administer this chapter.

(3) The corporation shall:

(a) Supervise and administer the lottery in accordance with the provisions of this chapter and the administrative rules and regulations adopted by the board.

(b) Submit quarterly and annual reports to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the State Treasurer, the State Auditor, the Joint Legislative Committee on Performance Evaluation and Expenditure Review, and the Commissioner of Revenue containing financial information and projections which include, but are not limited to, disclosure of gross revenues, expenses and net proceeds for the period.

(c) Adopt by administrative rules and regulations a system of continuous internal audits.

(d) Maintain weekly or more frequent records of lottery transactions, including distribution of tickets to lottery retailers, revenues received, claims for prizes, prizes paid and all other financial transactions of the corporation.

(e) Adopt by administrative rules and regulations a code of ethics for officers and employees of the corporation to carry out the standards of conduct established by this chapter.

(f) Adopt by administrative rules and regulations guidelines for the disposal of lottery property if the corporation is dissolved.

(4) There shall be no liability on the part of, and no cause of action shall arise against, the corporation, its governing board, staff, agents, vendors, or employees, arising out of or in connection with the issuance, failure to issue, or delivery of a lottery ticket.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 10, eff from and after September 1, 2018.

§ 27-115-21. Powers and duties of president of the corporation.

(1) The president, as chief executive officer of the corporation, shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and within the administrative rules and regulations adopted by the board. The president shall:

(a) Supervise and administer the operation of the corporation, the lottery and its games.

(b) Employ and direct such personnel as may be necessary to carry out

the purposes of this chapter and utilize such services, personnel or facilities of the corporation as he or she may deem necessary.

(c) Contract in accordance with the administrative rules and regulations adopted by the corporation with lottery retailers.

(d) Make available for inspection by the board or any member of the board, upon request, all books, records, files, and other information and documents of his or her office and to advise the board and recommend such administrative rules and regulations and other matters he or she deems necessary and advisable to improve the operation and administration of the lottery.

(e) Subject to the limitations under Section 27-115-69, enter into any contract pursuant to this chapter with any person for the promotion and operation of the lottery or for the performance of any of the functions as provided in this chapter or administrative rules and regulations adopted by the board.

(f) Attend meetings of the board or appoint a designee to attend on his or her behalf.

(g) Not later than thirty (30) days before the beginning of the corporation's fiscal year, submit the proposed annual budget of the corporation and projected net proceeds to the board for review and approval. In addition, the proposed annual budget of the corporation shall include a personnel table reporting information for each full-time and part-time permanent position, as follows:

(i) The position title and the salary for each position in the existing operating budget for the current fiscal year, indicating whether each position is filled or vacant as of the reporting date.

(ii) The position title and the salary recommended for each position for the next fiscal year.

(2) The president, with the approval of the board, may amend or modify the budget at any time in any manner deemed necessary for the proper operation of the corporation.

(3) Following his or her approval by the Governor and during his or her entire employment by the board, the president shall reside in Mississippi.

(4) The president and the board shall conduct an ongoing examination of the operation and administration of lotteries in other states and/or countries, including reviewing available literature on the subject, of federal laws and regulations which may affect the operation of the lottery, and of the reaction of citizens of this state to existing or proposed features of lottery games with a view toward implementing improvements that will tend to serve the purposes of this chapter. The president may also establish one or more market or equipment research centers for lottery products and may establish lottery player information centers.

(5) The president shall require bond from corporate employees with access to corporate funds or lottery funds in such an amount as provided in the administrative rules and regulations of the board.

(6) The president may:

(a) Require bond from other employees as he or she deems necessary.

(b) For good cause, suspend, revoke or refuse to renew any contract entered into in accordance with this chapter or the administrative rules and regulations of the board.

(c) Upon specific or general approval of the board, conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations, or to determine the qualifications or compliance by vendors and retailers.

(d) Upon specific or general approval of the board, enter into personal service contracts pursuant to administrative rules and regulations adopted by the board and compensate such consultants and technical assistants as may be required to carry out the provisions of this chapter.

(e) By agreement, secure information and services as he or she may deem necessary from any department, agency or unit of the federal, state or local government, and to the extent allowed by federal or state law, may compensate such department, agency or unit of government for its information and services.

(7) Agencies, departments or units of state government shall cooperate with the corporation to assure the integrity of the lottery and the effective operation of the lottery games.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 11, eff from and after September 1, 2018.

§ 27-115-23. Intelligence sharing, reciprocal use or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, gaming enforcement agencies of other jurisdictions authorized; exemption from Mississippi Public Records Act of records, documents, information obtained as a result.

(1) The corporation may enter into intelligence sharing, reciprocal use, or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions which provide for and regulate the use of information provided and received pursuant to the agreement.

(2) Records, documents and information in the possession of the corporation received pursuant to an intelligence sharing, reciprocal use or restricted use agreement entered into by the corporation with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be exempt from the Mississippi Public Records Act of 1983 and shall not be released by the corporation without the permission of the person or agency providing the record or information.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 12, eff from and after September 1, 2018.

§ 27-115-25. Employment of attorney by board authorized.

The board may employ an attorney and/or may contract with outside counsel when the board determines the need for such counsel.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 13, eff from and after September 1, 2018.

§ 27-115-27. Commercial advertising on lottery tickets authorized; nature of advertising to be provided by administrative rules and regulations.

(1) The corporation may enter into contracts with any person or persons that provide for the placement of commercial advertising on tickets. For purposes of this section, "commercial advertising" means advertising intended for the sole benefit of the advertiser.

(2) The nature of the advertising authorized in this section and the procedures for its acceptance as well as the implementation of this section shall be provided by administrative rules and regulations adopted by the board. The board shall retain, in its discretion, the authority to accept or reject any bid. Advertisements for tobacco and alcohol products shall not be accepted.

(3) Implementation of this section shall be in the manner provided in the administrative rules and regulations adopted by the board.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 14, eff from and after September 1, 2018.

§ 27-115-29. Corporation personnel program.

(1) The corporation shall establish and maintain a personnel program, including administrative rules and regulations for its employees. The corporation may procure benefit programs or group insurance plans and shall provide or arrange for a retirement plan. Unless otherwise specified by the president, employees of the corporation shall serve at the will and pleasure of the president who shall determine their compensation and benefits. The employees shall be subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the president and shall not be subject to civil service provisions. The compensation of officers at the division head level and above shall be determined by the board. Corporation employees shall not be considered employees of the State of Mississippi.

(2) No board member, officer or employee of the corporation or any spouse, sibling, ascendant or descendant of a board member, officer or employee shall have a financial interest in any vendor doing business or proposing to do business with the corporation.

(3) No board member, officer or employee of the corporation with decision-making authority shall participate in any decision involving a lottery retailer with whom the board member, officer or employee or any spouse, sibling, ascendant or descendant of such board member, officer or employee has a financial interest.

(4) No officer or employee of the corporation who leaves the employ of the corporation nor any board member may represent any vendor or lottery retailer before the corporation for a period of one (1) year following termination of employment with the corporation or membership on the board.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 15, eff from and after September 1, 2018.

§ 27-115-31. Background check on applicants for employment by corporation required.

(1) A background investigation shall be conducted by the security director of the corporation or his or her agent or designee on every applicant who has reached the final selection process prior to employment by the corporation. The background investigation shall include testing the applicants for the presence of illegal controlled substances. Applicants shall be fingerprinted as a condition of employment. In addition, all division chiefs and deputy chiefs, directors of the corporation, and employees of the corporation performing duties primarily related to security matters, and other employee positions prior to employment as determined by the board, shall be subject to a background investigation report conducted by the Department of Public Safety.

(2) The Department of Public Safety shall be reimbursed by the corporation for the cost of investigations conducted pursuant to this section.

(3) No person who has been convicted of a felony, bookmaking or other forms of illegal gambling, or a crime involving moral turpitude shall be employed by the corporation. The board may by administrative rules and regulations provide for a definition of moral turpitude.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 16, eff from and after September 1, 2018.

§ 27-115-33. Appeals of vendors, retailers, or persons aggrieved by actions of corporation president or decisions of board.

(1) Any lottery retailer, vendor or applicant for a lottery retailer or vendor contract aggrieved by an action of the president of the corporation may appeal that decision to the board in accordance with the administrative rules and regulations of the board.

(2) Any person aggrieved by a decision of the board may appeal the decision to the chancery court of the county in which its corporate headquarters is located within ten (10) days of the date of the decision of the board.

(3) The chancery court shall hear appeals from the board.

(4) The chancery court may remand an appeal to the board to conduct further hearings necessary to adjudicate the appeal.

(5) Any person who appeals the award of a lottery procurement for the supply of a lottery ticket shall be liable for all costs of appeal and defense in the event the appeal is denied or the contract award upheld. Costs of appeal and

defense may include, but should not be limited to, court costs, bond, legal fees and loss of income to the corporation resulting from institution of the appeal if, upon the motion of the corporation, the court finds the appeal to have been frivolous.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 17, eff from and after September 1, 2018.

§ 27-115-35. Bond for protection of corporation; other surety in lieu of bond; annual review of bond.

Whenever a bond is required for the protection of the corporation, letters of credit or other surety approved by the corporation may be utilized in lieu of a bond. All bonds or letters of credit shall be reviewed at least annually as to their solvency and sufficiency.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 18, eff from and after September 1, 2018.

§ 27-115-37. Bulk sale of lottery tickets by retailer, bulk purchase by investment syndicate, investment group, etc., prohibited.

The board shall promulgate administrative rules and regulations that define and prohibit the bulk sale of lottery tickets by a retailer and the bulk purchase of such tickets by an investment syndicate, investment group, or individual for investment purposes.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 19, eff from and after September 1, 2018.

§ 27-115-39. Toll-free telephone number of compulsive or problem gambling referral or information service organizations to be printed on lottery tickets.

The corporation shall require as a part of any contract for the production or printing of lottery tickets that each ticket include the toll-free telephone number of any state or national organization that provides information and referral services regarding compulsive or problem gambling.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 20, eff from and after September 1, 2018.

§ 27-115-41. Publication of quarterly and annual financial statements.

The corporation shall publish quarterly and annual financial statements, which shall be made available to the public within thirty (30) days following the close of each quarter. The quarterly and annual financial statements shall

include disposition of all funds expended by the corporation for any purpose, including disclosure of any major procurements.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 21, eff from and after September 1, 2018.

§ 27-115-43. Proceeds of certain lottery prizes subject to state and federal income tax withholding laws; withholding of attachments, garnishments or executions; verification of validity of winning tickets; payment of prizes; unclaimed prize money; persons prohibited from purchasing tickets or claiming prizes.

(1) Proceeds of any lottery prize of Six Hundred Dollars ($600.00) or more shall be subject to state and federal income tax withholding laws, as applicable. Any attachments, garnishments or executions authorized and issued pursuant to law shall also be withheld if timely served upon the process agent of the corporation.

(2) The board shall adopt administrative rules and regulations to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, except that:

(a) No prize, nor any portion of a prize, nor any right of any person to a prize awarded shall be assignable, except as provided for in Section 27-115-47. Any prize, or portion thereof, remaining unpaid at the death of a prizewinner shall be paid to the estate of the deceased prizewinner or to the trustee of a trust established by the deceased prizewinner if a copy of the trust document or instrument has been filed with the corporation, along with a notarized letter of direction from the deceased prizewinner, and no written notice of revocation has been received by the corporation prior to the deceased prizewinner's death. Following a deceased prizewinner's death and prior to any payment to such a trustee, the corporation shall obtain from the trustee and each trust beneficiary a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this chapter, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled.

(b) No ticket shall knowingly be sold to any person under the age of twenty-one (21).

(c) No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, unclaimed or not recorded by the corporation within applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with such additional specific rules and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved.

(d) No particular prize in any lottery game shall be paid more than once, and in the event of a binding determination that more than one (1) claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them an equal share in the prize.

(e) A holder of a winning ticket from a Mississippi lottery game or from a multistate or multisovereign lottery game shall claim a prize within the timeframe provided for in administrative rules and regulations. If a valid claim is not made for a prize within the applicable period, the prize shall constitute an unclaimed prize for purposes of paragraph (c) of this subsection.

(f) A person holding a winning lottery ticket in the amount of Six Hundred Dollars ($600.00) or more from a lottery game must provide his or her name and city or area of residence to the corporation to claim a prize. The corporation shall not disclose the identity of the person holding a winning lottery ticket without that person's written permission.

(3) No prize shall be paid upon a ticket purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of subsection (2)(c) of this section.

(4) Any unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions.

(5) The corporation is discharged of all liability upon payment of a prize.

(6) No ticket shall be purchased by and no prize shall be paid to any of the following persons:

(a) Any member of the board;

(b) Any officer, or employee of the corporation;

(c) Any vendor, including lottery retailers; or

(d) Any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any person listed in paragraph (a), (b) or (c) of this subsection.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 22, eff from and after September 1, 2018.

§ 27-115-45. Coordination with Department of Human Services to withhold lottery prizes of persons who have outstanding child support arrearages; coordination with state agencies to withhold lottery prizes of persons who have outstanding debts owed state.

(1) The board shall coordinate with the Department of Human Services to promulgate rules and regulations providing for the withholding of lottery prizes of persons who have outstanding child support arrearages as reported to the corporation, beginning at prize levels to be determined by the board. The corporation may require any agency reporting current child support arrearages to the corporation to provide information relating to such arrearages in a manner, format or record approved by the corporation. The corporation shall not be liable for withholding a lottery prize based upon child support arrearage

information provided to it. Additionally, the corporation shall employ the same methods, procedures and parameters to withhold lottery prizes for persons who have delinquent debt as submitted by a claimant agency to the Department of Revenue for recovery under Section 27-7-501 et seq. The corporation shall not be liable for withholding a lottery prize based upon delinquent debt information provided to it by the Department of Revenue.

(2) To the extent feasible, the board shall coordinate with state agencies to promulgate administrative rules and regulations providing for the withholding of lottery prizes of persons who have outstanding debts owed to the state.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 23, eff from and after September 1, 2018.

§ 27-115-47. Prize awarded in deferred annuity payments may be voluntarily assigned to a person other than the winner under certain circumstances and with judicial approval.

(1) Under an appropriate judicial order, any prize, or any portion of a prize, or any right of any person to a prize awarded, payable by the corporation in deferred annuity payments, may be paid to any person other than the winner.

(2) The right of a person to a prize payable by the corporation in deferred annuity payments may be voluntarily assigned as a whole or in part, if the assignment is made to a person designated in accordance with an order of the chancery court in the county where the corporation's headquarters is located. Any such order shall be deemed an appropriate judicial order.

(3) On the filing by the assignor or the assignee in chancery court of a petition seeking approval of a voluntary assignment, the court may issue an order approving a voluntary assignment and directing the corporation to make prize payments as a whole or in part to the assignee if the court finds all of the following:

(a) The assignment is in writing, is executed by the assignor, and is by its terms subject to the laws of this state.

(b) The assignor provides a sworn affidavit attesting that the assignor is of sound mind, is in full command of the assignor's faculties, and is not acting under duress.

(c) The assignor has been advised about the assignment by an independent attorney who is not related to and not compensated by the assignee or an affiliate of the assignee.

(d) The assignor understands that the assignor will not receive the prize payments or parts of payments during the years assigned.

(e) The assignor understands and agrees, with regard to the assigned payments, that the corporation, board of directors, and officials and employees of the corporation shall have no further liability or responsibility for making the assigned payments.

(f) The assignee provides the assignor with a one-page disclosure statement that sets forth in bold type not less than fourteen (14) points in

size the payments being assigned by amount and payment date, the purchase price, the rate of discount to present value, assuming daily compounding and funding on the contract date, and any origination or closing fee that will be charged to the assignor.

(g) The contract of assignment expressly states that the assignor has three (3) business days after signing the contract to cancel the assignment.

(h) The assignor and assignee do not seek assignment for purposes of evading creditors, judgments or obligations of child support.

(i) The assignor and assignee have certified that neither of them has a child support obligation or, if either does have a child support obligation, that no arrearage is due, and that neither the assignor nor the assignee is obligated to repay any public assistance benefits or overpayment of child support.

(j) The petition required by this subsection shall be accompanied by a certification from a representative of the Mississippi Department of Human Services stating any of the following:

(i) That the assignor or assignee does not currently have a child support arrearage, or the assignor or assignee does not owe an obligation to repay any public assistance benefits or an overpayment of child support benefits to the Mississippi Department of Human Services.

(ii) That the assignor or assignee does currently have a child support obligation and that no arrearage is due to the Mississippi Department of Human Services.

(iii) That the assignor or assignee does currently have a child support arrearage, or the assignor or assignee does owe an obligation to repay any public assistance benefits or an overpayment of child support benefits to the Mississippi Department of Human Services.

The certification from the Mississippi Department of Human Services shall be provided to the assignor and the assignee promptly upon the request of the assignor or the assignee, and in no event more than ten (10) business days after the request is received by the Mississippi Department of Human Services.

(4) Written notice of the petition and proposed assignment and any court hearing concerning the petition and proposed assignment shall be served on the corporation, which shall be made a party thereto.

(5)(a) The corporation, not later than ten (10) days after receiving a certified copy of a court order approving a voluntary assignment, shall send the assignor and the assignee written confirmation of both of the following:

(i) The court-approved assignment.

(ii) The intent of the corporation to rely on the assignment in making payments to the assignee named in the order free from any attachments, garnishments or executions.

(b) The corporation shall thereafter make payments in accordance with the assignment.

(6)(a) Neither the state nor the corporation, its board, nor any of its officials or employees shall be liable in any manner for any assigned payments made by the corporation pursuant to this section.

(b) The assignor and assignee shall hold harmless and indemnify the state, the corporation, its board of directors, and its employees and agents from all claims, suits, actions, complaints or liabilities related to the assignment.

(7) The assignee shall pay any costs incurred by the corporation related to the assignment.

(8) The assignee shall notify the corporation of its business location and mailing address for payment purposes and of any change in location or address during the entire course of the assignment.

(9) A court order or a combination of court orders issued pursuant to this section may not require the corporation to divide a single prize payment among more than three (3) different persons.

(10) If the Internal Revenue Service or a court of competent jurisdiction issues a determination letter, revenue ruling, or other public document declaring that the voluntary assignment of prizes will affect the federal income taxation treatment of lottery prizewinners who do not assign their prizes, the following shall occur:

(a) Within fifteen (15) days after the corporation receives the letter, ruling or other document, the president of the corporation shall file a copy of it with the Attorney General; and

(b) A court shall not issue an order authorizing a voluntary assignment under this section.

(11) This section shall prevail over any inconsistent provision in Mississippi law.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 24, eff from and after September 1, 2018.

§ 27-115-49. Contracts for major procurements.

(1) The corporation shall enter into its contracts for major procurements after bidding. The corporation may adopt administrative rules and regulations pursuant to the provisions of this chapter providing for special procedures whereby the Mississippi Lottery Corporation may make any class of procurement.

(2) In its bidding processes, the corporation may do its own bidding and procurement or may utilize the services of the Department of Finance and Administration, the Department of Information Technology Services, or other state agencies as appropriate and necessary. The president of the corporation may, with approval of the board, declare an emergency for purchasing purposes which shall be governed by the administrative rules and regulations adopted by the board.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 25, eff from and after September 1, 2018.

§ 27-115-51. Deposit of monies received from sale of lottery tickets into corporate operating account; investment of monies in corporate operating account; Lottery Proceeds Fund established; transfer of net proceeds from corporate operating account to Lottery Proceeds Fund.

(1)(a) All monies received by the corporation from the sale of lottery tickets and all other sources shall be deposited into a corporate operating account. Such account shall be established in a custodian financial institution domiciled in the State of Mississippi and insured by the Federal Deposit Insurance Corporation and collateralized as prescribed by Section 27-105-5. The corporation may use all monies in the corporate operating account for the purposes of paying prizes and the necessary expenses of the corporation and dividends to the state. The corporation shall estimate and allocate the amount to be paid by the corporation to prizewinners.

(b)(i) The investment of monies in the corporate operating account, other than the amount specifically required for the purchase of securities for payment of deferred prizes, shall be invested in a manner prescribed by the board, consistent with law. Such securities purchased as investments by the corporation shall be issued in the name of the corporation and shall be kept at a custodian financial institution domiciled in the State of Mississippi insured by the Federal Deposit Insurance Corporation.

(ii) The investment of monies in the corporate operating account, other than the amount specifically required for the purchase of securities for deferred prize payments to winners, shall be invested only in securities in a manner prescribed by the board, consistent with law. Such securities purchased as investments by the corporation shall be issued in the name of the corporation and shall be safe kept at a custodian financial institution domiciled in the State of Mississippi insured by the Federal Deposit Insurance Corporation.

(iii) These instruments may be in varying maturities and may be in book-entry form.

(iv) For the purpose of deferred prize payments to winners, the corporation shall purchase or invest in only those securities prescribed by the board, consistent with law.

(c) Within twenty (20) days following the close of each calendar month, the corporation shall transfer to the Lottery Proceeds Fund in the State Treasury the amount of net proceeds.

(d) The apportionment of the total gross revenues accruing from the sale of lottery tickets or shares and from all other sources shall be as follows:

(i) The payment of prizes to the holders of winning lottery tickets or shares which in any case shall be no less than fifty percent (50%) of the total gross revenues accruing from the sale of lottery tickets.

(ii) The payment of costs incurred in the operation and administration of the lottery, including the expenses of the corporation and the costs

resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of lottery equipment and materials, which in no case shall exceed fifteen percent (15%) of the total gross revenues accruing from the sale of lottery tickets. However, this restriction shall not apply until after the first twelve (12) months of revenue generation.

(2) A Lottery Proceeds Fund is hereby established in the State Treasury. Net proceeds shall be deposited into this fund as provided in subsection (1) of this section. Monies deposited into the Lottery Proceeds Fund shall be invested by the state in accordance with state investment practices, and all earnings from such investments shall accrue to this account. No monies shall be allotted or expended from this account unless pursuant to a warrant issued as provided under Section 27-115-85.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 26, eff from and after September 1, 2018.

§ 27-115-53. Acceptance and expenditure of monies; corporation intended to be self-sustaining and self-funded.

(1) The corporation may accept and expend such monies as may be appropriated by the Legislature or such monies as may be received from any source, including income from the corporation's operations, for effectuating its corporate purposes, including the payment of the initial expenses of administration and operation of the corporation and the lottery.

(2) The corporation is intended to be self-sustaining and self-funded. Monies in the State General Fund shall not be used or obligated to pay the prizes of the lottery, and no claim for the payment of an expense of the lottery or prizes of the lottery may be made against any monies other than monies credited to the corporate operating account.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 27, eff from and after September 1, 2018.

§ 27-115-55. Selection of lottery retailers; disqualifying factors.

(1) The Legislature hereby recognizes that to conduct a successful lottery, the corporation must develop and maintain a statewide network of lottery retailers that will serve the public convenience and promote the sale of tickets, while ensuring the integrity of the lottery operations, games and activities.

(2) To govern the selection of lottery retailers, the board shall, by administrative rules and regulations, develop a list of objective criteria upon which the selection of lottery retailers shall be based. In developing these criteria, the board shall consider such factors as the applicant's financial responsibility, location and security of the applicant's place of business or activity, integrity, and reputation; however, the board shall not consider political affiliation, activities or monetary contributions to political organiza-

tions or candidates for any public office. The criteria shall include, but not be limited to, the following:

(a) The applicant shall be current in payment of all taxes, interest and penalties owed to any taxing political subdivision where the lottery retailer will sell lottery tickets.

(b) The applicant shall be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the State of Mississippi, excluding items under formal appeal pursuant to applicable statutes, before a license is issued and before each renewal.

(c) No person shall be selected as a lottery retailer for the sale of lottery tickets who:

(i) Has been convicted of a criminal offense related to the security or integrity of the lottery in this or any other jurisdiction.

(ii) Has been convicted of any illegal gambling activity, false statements, false swearing or perjury in this or any other jurisdiction, or convicted of a felony.

(iii) Has been found to have violated the provisions of this chapter or any administrative rules and regulations adopted under this chapter, unless either ten (10) years have passed since the violation, or the president and the board find the violation both minor and unintentional in nature.

(iv) Is a vendor or an employee or agent of any vendor doing business with the corporation.

(v) Resides in the same household as an officer or board member of the corporation.

(vi) Has made a statement of material fact to the corporation, knowing such statement to be false.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 28, eff from and after September 1, 2018.

§ 27-115-57. Lottery retailer contract not transferable or assignable; issuance and public display of lottery retailer certificate.

(1) No lottery retailer contract awarded pursuant to this chapter shall be transferable or assignable. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

(2) Each lottery retailer shall be issued a lottery retailer certificate which shall be conspicuously displayed at the place where the lottery retailer is authorized to sell lottery tickets. Lottery tickets shall only be sold by the retailer at the location stated on the lottery retailer certificate.

(3) For the convenience of the public, all retailers may pay winners up to Six Hundred Dollars ($600.00) after performing validation procedures appropriate to the lottery game involved.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 29, eff from and after September 1, 2018.

§ 27-115-59. Lottery retailer to post bond or letter of credit.

The corporation shall require each lottery retailer to post a letter of credit or a bond with the corporation using a surety acceptable to the corporation in an amount not to exceed twice the average lottery ticket sales of the lottery retailer for the period within which the lottery retailer is required to remit lottery funds to the corporation. This section does not apply to lottery tickets which are prepaid by the lottery retailers. The corporation may facilitate the purchase of bonds and letters of credit by establishing lottery retailer pools for the purchase of bonds and letters of credit for lottery retailers.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 30, eff from and after September 1, 2018.

§ 27-115-61. Contracting with retailers; contract contents; cancellation, denial, revocation, suspension, rejection of renewal, or termination of lottery retailer contract.

(1) Any contract executed by the corporation with a lottery retailer pursuant to this section shall specify the reasons for which any contract may be cancelled, denied, revoked, suspended, renewal rejected or terminated by the corporation, which reasons may include, but not be limited to:

(a) Commission of a violation of this chapter or administrative rules and regulations adopted pursuant to this chapter.

(b) Failure to accurately account for lottery tickets, revenues or prizes as required by the corporation.

(c) Commission of any fraud, deceit or misrepresentation.

(d) Insufficient sale of tickets.

(e) Conduct prejudicial to public confidence in the lottery.

(f) The lottery retailer filing for or being placed in bankruptcy or receivership.

(g) Any material change in any matter considered by the corporation in executing the contract with the lottery retailer.

(h) Failure to meet any of the objective criteria established by the board pursuant to this chapter.

(2) If, in the discretion of the president, cancellation, denial, revocation, suspension, rejection of renewal or termination of a lottery retailer contract is in the best interest of the lottery, the public welfare, or the State of Mississippi, the president may cancel, deny, revoke, suspend, reject the renewal, or terminate, after notice and a hearing, any contract issued pursuant to this chapter. Such contract may, however, be temporarily suspended by the president without prior notice, pending any prosecution, hearing or investigation, whether by a third party or by the president. A contract may be cancelled, denied, revoked, suspended, renewal rejected or terminated by the president for any one or more of the reasons enumerated in this section.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 31, eff from and after September 1, 2018.

§ 27-115-63. Proceeds from lottery ticket sales received by retailer to be trust fund.

(1)(a) All proceeds from the sale of lottery tickets received by a lottery retailer shall constitute a trust fund until paid to the corporation either directly or through the corporation's authorized collection representative. A lottery retailer shall have a fiduciary duty to preserve and account for lottery proceeds, and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable sales commissions and credit for lottery prizes to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or its authorized collection representative upon demand.

(b) The corporation shall, by administrative rules and regulations, require lottery retailers to place all lottery proceeds due the corporation in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the lottery retailer until the date they are paid over to the corporation. Each lottery retailer shall establish a separate bank account for lottery proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(2) Whenever any person who receives proceeds from the sale of lottery tickets in the capacity of a lottery retailer becomes insolvent, or dies insolvent, the proceeds due the corporation from such person or his or her estate shall have preference over all debts or demands.

HISTORY: Laws, 2018, 1st Ex Sess, ch 2, § 32, eff from and after September 1, 2018.

§ 27-115-65. Sales and sale price of tickets; gifting tickets.

(1) No person shall sell a ticket at a price other than established by the corporation, unless authorized in writing by the president. No person other than a duly certified lottery retailer shall sell lottery tickets, but this shall not be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets to another. Nothing in this chapter shall be construed to prohibit the corporation from designating certain of its agents and employees to sell lottery tickets directly to the public.

(2) Lottery tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers subject to approval by the board.

(3) No lottery retailer shall sell a ticket except from the locations listed in the contract.

(4) No lottery tickets shall be sold at State of Mississippi safety rest areas.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 33, eff from and after September 1, 2018.

§ 27-115-67. Display of signs on licensed premises providing toll-free telephone number of compulsive or problem gambling referral or information service organizations.

The corporation shall require the posting of one or more signs on licensed premises at each point of entry into areas where lottery tickets are sold to inform patrons of a toll-free telephone number of any state or national organization that provides information and referral services regarding compulsive or problem gambling. Failure by the owner of the licensed premises to post and maintain such a sign or signs shall be cause for the imposition of a fine to be determined by the board.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 34, eff from and after September 1, 2018.

§ 27-115-69. Purchase, lease or lease-purchase of goods, services necessary to effectuate lottery; investigation of prospective lottery system vendors; requisite vendor disclosures; prohibited contracts; posting of performance bond or letter of credit by vendor; contract to include provision for payment of liquidated damages; contracts to be governed by Mississippi law.

(1) The corporation may purchase, lease or lease-purchase such goods or services as are necessary for effectuating the purposes of this chapter. The corporation shall not contract with any person or entity for the total operation and administration of the lottery, but it may make procurements which integrate such functions as lottery game design, lottery ticket distribution to retailers, supply of goods and services and advertising. In all procurement decisions, the corporation shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the lottery and the objectives of raising net proceeds for the benefit of the public.

(2) The corporation shall investigate the financial responsibility, security and integrity of any lottery system vendor who submits a bid, proposal or offer. At the time of submitting such bid, proposal or offer to the corporation, the corporation shall require the following items:

(a) A disclosure of the vendor's name and address and, as applicable, the name and address of the following:

(i) If the vendor is a corporation, the officers, directors and each stockholder in such corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own five percent (5%) or more of such securities need be disclosed.

(ii) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.

(iii) If the vendor is an association, the members, officers and directors.

(iv) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(b) A disclosure of all the states and jurisdictions in which the vendor does business, and the nature of the business for each such state or jurisdiction.

(c) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction.

(d) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a gaming license of any kind, or had fines or penalties assessed on their license, contract, or operation, and the disposition of such in each such state or jurisdiction. If any lottery license or contract has been revoked or has not been renewed or any lottery license or application has remained pending for more than six (6) months, then it shall be disclosed.

(e) A disclosure of the details of any finding of a plea, conviction or adjudication for guilt, in a state or federal court, of the vendor for any felony or any other criminal offense other than a traffic violation.

(f) A disclosure of the details of any bankruptcy, insolvency, reorganization, corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor.

(g) Such additional disclosures and information as the corporation may determine to be appropriate for the procurement involved. If the vendor subcontracts any substantial portion of the work to be performed under the contract to a subcontractor, the vendor shall disclose all of the information required by this subsection for the subcontractor as if the subcontractor were itself a vendor.

(3) In no case shall the corporation enter into a contract for a procurement of any video lottery or video lottery terminal or any other illegal lottery device, and shall only enter into a contract for a procurement for any lottery system with a vendor who has complied with the disclosures required by the corporation and described in subsection (2) of this section, and any contract with such a vendor is void and unenforceable. Any contract with a vendor who does not comply with such requirements for periodically updating such disclosures during the tenure of a contract as may be specified in such contract is voidable and may be terminated by the corporation. The provisions of this section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the corporation of the competence, integrity, background and character of vendors.

(4)(a) A contract shall not be entered into with any vendor who has been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction or with any vendor who is found to be in possession of any illegal lottery device.

(b) A contract shall not be entered into with any vendor who has not first obtained a signed tax clearance from the Commissioner of Revenue indicating that the vendor is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the State of Mississippi, excluding items under formal appeal pursuant to applicable statutes.

(5) The corporation may require that each vendor shall, at the execution of the contract with the corporation, post a performance bond or letter of credit from a bank acceptable to the corporation, in an amount established by the corporation subject to the provisions of Section 27-115-61. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the corporation securities that are interest-bearing or accruing and that are rated in one (1) of the three (3) highest classifications by an established nationally recognized investment rating service. Securities eligible under this subsection are limited to:

(a) Certificates of deposit issued by solvent banks or savings associations approved by the corporation and which are organized and existing under the laws of this state or under the laws of the United States.

(b) United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest.

(c) Corporate bonds approved by the corporation. The corporation which issued the bonds shall not be an affiliate or subsidiary of the depositor. Such securities shall be held in trust.

(6) Every contract entered into by the corporation pursuant to this section shall contain a provision for payment of liquidated damages to the corporation for any breach of contract by the vendor.

(7) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this section shall be governed by the laws of this state.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 35, eff from and after September 1, 2018.

§ 27-115-71. Criminal background investigation of potential vendors; criminal background and credit investigations of potential employees.

(1) The Mississippi Department of Public Safety shall perform full criminal background investigations on all potential vendors, including potential lottery retailers, and potential employees of the corporation at the level of division head and above, and at any level within a division handling security, and, as determined by the board, on any other employee of the corporation. The corporation shall reimburse the Department of Public Safety for the actual costs of such investigations.

(2) The corporation or its division handling security shall:

(a) Conduct criminal background investigations and credit investigations on all potential employees of the corporation not referred to in

subsection (1) of this section or not investigated by the Department of Public Safety.

(b) Supervise ticket validation and lottery drawings.

(c) For just cause and subject to the terms of the vendor contract, inspect the facilities of any vendor in order to determine the integrity of the vendor's product and in order to determine whether the vendor is in compliance with its contract.

(d) Report any suspected violations of this chapter to the appropriate district attorney, or the Attorney General, and law enforcement agencies.

(e) Upon request, provide assistance to any district attorney, the Attorney General, or law enforcement agency investigating a violation of this chapter.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 36, eff from and after September 1, 2018.

§ 27-115-73. Sale of lottery tickets to or purchase by persons under the age of twenty-one prohibited; responsibility of lottery retailers to verify age of purchaser; penalties.

(1)(a) No lottery retailer and no agent, associate, employee, representative or servant of any such person shall allow any illegal lottery device to be on its premises, nor shall any lottery retailer, agent, associate, employee, representative or servant sell a lottery ticket to any person unless the person submits any one (1) of the following forms of identification which establish the age of the person as twenty-one (21) years or older:

(i) A valid and current Mississippi driver's license which contains a photograph of the person presenting the driver's license.

(ii) A valid and current driver's license of another state which contains a photograph of the person submitting the driver's license.

(iii) A valid and current special identification card issued by the State of Mississippi containing a photograph of the person submitting the identification card.

(iv) A valid and current passport or visa issued by the federal government or another country or nation that contains a permanently attached photograph of the person submitting the passport or visa.

(v) A valid and current military or federal identification card issued by the federal government containing a photograph of the person submitting the identification card.

(b) Each form of identification listed in paragraph (a) of this subsection must on its face establish the age of the person as twenty-one (21) years of age or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned in paragraph (a) of this subsection shall be accepted as proof of age if it is expired, defaced, mutilated or altered. If the driver's license, state special identification card or lawful identification submitted is a duplicate, the

person shall submit additional identification which contains the name, date of birth and photograph of the person.

(c) An educational institution identification card, check-cashing identification card, or employee identification card shall not be considered as lawful identification for the purposes of this subsection.

(2) Any lottery retailer who knowingly sells a lottery ticket to a person under twenty-one (21) years of age will be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for the first offense and, for each subsequent offense, not less than Two Hundred Dollars ($200.00) nor more than One Thousand Dollars ($1,000.00) and may be disqualified as a lottery retailer.

(3)(a) It is unlawful for any person under twenty-one (21) years of age to purchase a lottery ticket.

(b) Whoever violates the provisions of this subsection shall be fined not more than One Hundred Dollars ($100.00).

(c) Any person apprehended while violating the provisions of this subsection shall be issued a citation by the apprehending law enforcement officer, which shall be paid in the same manner as provided for the offenders of local traffic violations.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 37, eff from and after September 1, 2018.

§ 27-115-75. Prohibited acts; penalties.

(1) Any person, with intent to defraud, who falsely makes, alters, forges, utters, passes or counterfeits a state lottery ticket shall be punished by imprisonment for not less than one (1) year and not more than twenty (20) years, by a fine of not more than Fifty Thousand Dollars ($50,000.00), or by both such fine and imprisonment.

(2) Any person who influences or attempts to influence the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials shall be punished by imprisonment for not less than one (1) year and not more than twenty (20) years, by a fine of not more than Fifty Thousand Dollars ($50,000.00), or by both such fine and imprisonment.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 38, eff from and after September 1, 2018.

§ 27-115-77. Employment of former board members or corporation officers by vendors of the corporation within one year after termination of service with corporation prohibited; exceptions; administration of provisions of section by State Ethics Commission.

(1) No former board member or officer of the corporation, or a corporation or other entity owned, in whole or in part, by a former board member or officer

of the corporation, shall solicit or accept employment or enter into a contract for compensation of any kind with a vendor of the corporation within one (1) year after termination of service with the corporation.

(2) The name of any individual who is a board member or an officer or employee of the corporation shall not appear upon any lottery ticket, lottery game, lottery form or paper used in playing any lottery game.

(3) Violation of any provision of this section by a board member, officer or employee of the corporation shall constitute cause for removal from office or dismissal from employment.

(4) The provisions of subsections (1) and (3) of this section shall not apply to ex officio members of the board.

(5) The State Ethics Commission shall administer and enforce the provisions of this section. The procedures and penalties provided for in Section 25-4-101 et seq. shall apply to the administration and enforcement of the provisions of this section.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 39, eff from and after September 1, 2018.

§ 27-115-79. Skimming of lottery proceeds; penalties.

(1) Skimming of lottery proceeds is the intentional excluding, or the taking of any action in an attempt to exclude, of anything or its value from the deposit, counting, collection or computation of gross revenues or net proceeds from lottery activities.

(2) Whoever commits the crime of skimming of lottery proceeds when the amount skimmed or to be skimmed is less than One Thousand Dollars ($1,000.00) may be imprisoned for not more than five (5) years, or may be fined not more than Five Thousand Dollars ($5,000.00), or both.

(3) Whoever commits the crime of skimming of lottery proceeds when the amount skimmed or to be skimmed is One Thousand Dollars ($1,000.00) or more but less than Ten Thousand Dollars ($10,000.00), shall be imprisoned for not less than three (3) years nor more than ten (10) years without benefit of probation, parole, or suspension of sentence, and may be fined not more than Twenty-five Thousand Dollars ($25,000.00), or both.

(4) Whoever commits the crime of skimming of lottery proceeds when the amount skimmed or to be skimmed is Ten Thousand Dollars ($10,000.00) or more shall be imprisoned for not less than ten (10) years nor more than twenty-five (25) years without benefit of probation, parole, or suspension of sentence, and may be fined not more than Fifty Thousand Dollars ($50,000.00), or both imprisonment and fine.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 40, eff from and after September 1, 2018.

§ 27-115-81. Possession of illegal lottery devices prohibited; material false statement; material false entry in record submitted to corporation; penalties for violation.

No person shall knowingly or intentionally use or possess an illegal lottery device or make a material false statement in any application for a license or proposal to conduct lottery activities or make a material false entry in any book or record which is compiled or maintained or submitted to the corporation pursuant to the provisions of this chapter. Any person who violates the provisions of this section shall be imprisoned for not less than five (5) years nor more than ten (10) years without benefit of probation, parole or suspension of sentence, and may be fined an amount not to exceed Twenty-five Thousand Dollars ($25,000.00) or the dollar amount of the false entry or statement, whichever is greater, or both such fine and imprisonment.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 41, eff from and after September 1, 2018.

§ 27-115-83. Illegal lottery devices; definitions; confiscation.

(1) Illegal lottery devices as described in this section are considered gambling devices and contraband.

(2) As used in this section, the term "illegal lottery device" means:

(a) Forged, counterfeit, or stolen, or improperly issued or illegally possessed lottery tickets.

(b) Any device or equipment that is in itself or is being used as part of any sort of a video lottery terminal.

(c) Any tickets, payouts, receipts or the like which are generated by, taken from or are related to any sort of a video lottery terminal.

(3) All law enforcement officers of municipal police forces, sheriff's departments, and the state shall confiscate and preserve all illegal lottery devices that come to their attention for evidence in the prosecution of those individuals in possession of same. Any such illegal lottery device will be subject to confiscation and destruction.

(4) Neither the state nor any political subdivision, agency, agent, or enforcement officer thereof shall be liable civilly or criminally for the destruction of any illegal lottery device.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 42, eff from and after September 1, 2018.

§ 27-115-85. Allocation of revenues.

Until June 30, 2028, net proceeds generated by the Alyce G. Clarke Mississippi Lottery Law, created pursuant to Sections this chapter and deposited into the Lottery Proceeds Fund under Section 27-115-51(2), except as otherwise provided in this section, shall be paid into the State Highway Fund

by warrant issued by the State Fiscal Officer upon requisition of the State Transportation Commission as needed to provide funds to repair, renovate and maintain highways and bridges of the state; however, funds paid into the State Highway Fund under this section shall be first used for matching federal funds authorized to the state pursuant to any federal highway infrastructure program implemented after September 1, 2018. However, all such monies deposited into the Lottery Proceeds Fund over Eighty Million Dollars ($80,000,000.00) in a fiscal year shall be transferred into the Education Enhancement Fund for the purposes of funding the Early Childhood Learning Collaborative, the Classroom Supply Fund and/or other educational purposes. From and after July 1, 2028, the net proceeds shall be deposited into the Lottery Proceeds Fund and shall be transferred to the State General Fund, except for the amounts over Eighty Million Dollars ($80,000,000.00) which shall continue to be deposited in the Education Enhancement Fund as provided above.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 43, eff from and after September 1, 2018.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the section by substituting "transferred" for "tranferred." The Joint Committee ratified the correction at its August 12, 2019, meeting.

§ 27-115-87. Corporation division heads, employees are public servants.

All division heads, officers and employees of the corporation shall be considered public servants as defined in Section 25-4-103. All division heads and officers of the corporation are subject to Section 25-4-25 and shall be required to file a Statement of Economic Interest with the Mississippi Ethics Commission.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 44, eff from and after September 1, 2018.

§ 27-115-89. Reports; annual audit by independent auditor.

To ensure the financial integrity of the lottery, the corporation through its board shall:

(a) Compile and submit quarterly and annual reports and financial statements, in compliance with Sections 27-115-19(3)(b) and 27-115-41;

(b) Contract with an independent auditor who is a certified public accountant or firm to conduct an annual financial audit of the books and records of the corporation. The cost of this annual financial audit shall be an operating expense of the corporation:

(i) Such independent auditor shall have no financial interest in any vendor with whom the corporation is under contract;

(ii) All contracts for independent auditors shall be reviewed by and subject to the approval of the State Auditor to ensure that the independent auditor is qualified to perform the audit;

(iii) The audit shall be completed within ninety (90) days after the close of the corporation's fiscal year; and

(iv) Contracts may be entered into for audit services for a period not to exceed five (5) years and the same firm shall not receive two (2) consecutive audit contracts.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 45, eff from and after September 1, 2018.

§ 27-115-91. Informational submission of annual operating budget to Joint Legislative Budget Commission.

For informational purposes only, the corporation shall submit to the Joint Legislative Budget Committee a copy of the corporation's annual operating budget for the upcoming fiscal year. The budget shall include an estimate of net proceeds to be deposited into the State Highway Fund during the succeeding fiscal year.

HISTORY: Laws, 2018, 1st Ex Sess, ch. 2, § 46, eff from and after September 1, 2018.

CHAPTER 117

ISRAEL SUPPORT ACT OF 2019

Sec.

27-117-1. Short title [Repealed effective July 1, 2024].
27-117-3. Definitions [Repealed effective July 1, 2024].
27-117-5. Duties of the Executive Director of the Department of Finance and Administration [Repealed effective July 1, 2024].
27-117-7. Limitation on the Public Employees' Retirement System and State Treasury Investments [Repealed effective July 1, 2024].
27-117-9. Exception to investment prohibition [Repealed effective July 1, 2024].
27-117-11. Limitation of chapter due to fiduciary obligations [Repealed effective July 1, 2024].
27-117-13. Indemnification of employees and officials for compliance with this chapter [Repealed effective July 1, 2024].
27-117-15. Repeal of this chapter [Repealed effective July 1, 2024].

§ 27-117-1. Short title [Repealed effective July 1, 2024].

This chapter shall be known and may be cited as the "Israel Support Act of 2019."

HISTORY: Laws, 2019, ch. 336, § 1, eff from and after July 1, 2019.

Editor's notes — For repeal date of this section, see § 27-117-15.

§ 27-117-3. Definitions [Repealed effective July 1, 2024].

As used in this chapter, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Boycott Israel" or "boycott of Israel" means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the public fund to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.

(b) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exists for the purpose of making profit.

(c) "Expense" means all explicit costs associated with divesting of investments, including, but not limited to, trading costs, brokerage commissions, and any realized losses, and all implicit costs, including, but not limited to, lost opportunity costs resulting from the prohibition from making certain investments.

(d) "Investment" means a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. The term "investment" does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments or the like.

(e) "Public fund" means the Public Employees' Retirement System and the Treasurer's office.

(f) "Scrutinized companies" means companies that boycott Israel or engage in a boycott of Israel.

HISTORY: Laws, 2019, ch. 336, § 2, eff from and after July 1, 2019.

Editor's notes — For repeal date of this section, see § 27-117-15.

§ 27-117-5. Duties of the Executive Director of the Department of Finance and Administration [Repealed effective July 1, 2024].

(1)(a) Before December 31, 2019, the Executive Director of the Department of Finance and Administration shall develop or contract to develop, using credible information available to the public, a list of companies determined to engage in a boycott of Israel, as described in this section.

When completed, the list must be posted on the website of the Department of Finance and Administration.

(b) The executive director shall update the list by July 1 of every year.

(c) Before a company is included on the finalized initial list or updated list, the executive director must do all of the following:

(i) Provide ninety (90) days written notice of the executive director's intent to include the company on the list. The notice must inform the company that inclusion on the list will make the company ineligible for investment by the State or Public Employees Retirement System. The notice also must specify that the company, if it ceases its boycott of Israel, may be removed from the list.

(ii) The executive director shall provide a company with an opportunity to comment in writing that it is not engaged in a boycott of Israel. If the company demonstrates to the executive director that the company is not engaged in a boycott of Israel, the company shall not be included on the list.

(d) The executive director shall make every effort to avoid including a company on the list erroneously.

HISTORY: Laws, 2019, ch. 336, § 3, eff from and after July 1, 2019.

Editor's notes — For repeal date of this section, see § 27-117-15.

§ 27-117-7. Limitation on the Public Employees' Retirement System and State Treasury Investments [Repealed effective July 1, 2024].

(1) The Public Employees' Retirement System and the State Treasurer may not invest funds with a company that is identified on a list created pursuant to Section 27-117-5 as a company engaging in a boycott of Israel.

(2) Any existing investments in violation of this chapter as of July 1, 2020, must be divested when prudent to do so but not later than one hundred twenty (120) days after the posting is made on the website of the Department of Finance and Administration.

HISTORY: Laws, 2019, ch. 336, § 4, eff from and after July 1, 2019.

Editor's notes — For repeal date of this section, see § 27-117-15.

§ 27-117-9. Exception to investment prohibition [Repealed effective July 1, 2024].

Notwithstanding the provisions of Section 27-117-7, an investment may be made in a company engaged in a boycott of Israel, on a case by case basis, if:

(a) The investment was made before December 31, 2019, and the company has adopted, publicized and is implementing a formal plan to cease the boycott of Israel and to refrain from engaging in any new boycott of Israel; or

(b) The investor makes a determination that the investments are necessary in order to perform its functions.

HISTORY: Laws, 2019, ch. 336, § 5, eff from and after July 1, 2019.

Editor's notes — For repeal date of this section, see § 27-117-15.

§ 27-117-11. Limitation of chapter due to fiduciary obligations [Repealed effective July 1, 2024].

Nothing in this chapter shall be construed to require the Public Employees' Retirement System of Mississippi or the State Treasurer or their agents to take any action as described in this chapter unless it is determined, in good faith, that: the action described in this chapter is consistent with the fiduciary responsibilities of the Public Employees' Retirement System of Mississippi or the State Treasurer or their agents; and there are appropriated funds of the state to absorb the expenses necessary to implement this chapter.

HISTORY: Laws, 2019, ch. 336, § 6, eff from and after July 1, 2019.

Editor's notes — For repeal date of this section, see § 27-117-15.

§ 27-117-13. Indemnification of employees and officials for compliance with this chapter [Repealed effective July 1, 2024].

Present, future and former board members, officers, employees and agents of the Public Employees' Retirement System and the Department of Finance and Administration, as well as present, future and former State Treasurers, officers and employees of the State Treasurer and agents retained by the State Treasurer, must be indemnified from the State General Fund and held harmless by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses and damages of any nature whatsoever that these present, future or former board members, officers, employees, agents or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce or eliminate investments pursuant to this chapter.

HISTORY: Laws, 2019, ch. 336, § 7, eff from and after July 1, 2019.

Editor's notes — For repeal date of this section, see § 27-117-15.

§ 27-117-15. Repeal of this chapter [Repealed effective July 1, 2024].

This chapter shall stand repealed from and after July 1, 2024.

HISTORY: Laws, 2019, ch. 336, § 8, eff from and after July 1, 2019.